

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

CIVIL REVISION PETITION No.6332 OF 2017

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the decree holder in Arbitration Case No.611 of 2015. E.P.(SR).No.4961 of 2017 was filed for execution of the said decree before the learned Principal District Judge, East Godavari District, Rajahmundry. By docket order dated 09.08.2017, the Executing Court returned the E.P. holding as under:

“5. By the record, the E.P is filed by the G.P.A. of the D.Hr., who also engaged the advocate for conducting the proceedings.

6. This can be distinguished to the situation where principal directly filing E.P and engaging advocate. The principal directly filing E.P. and directly engaging advocate means conducting the proceedings by him or herself whereas filing of E.P. by Power of Attorney through his/her counsel stands in different footing, as the Advocate is representing the Attorney but not the principal. Therefore, filing of the E.P. by the Attorney/G.P.A. even though advocate appointed by him/her amounts to conducting the matter by the Attorney. Consequently, such proceedings/.E.P warrants compliance of Rule 33, as such, filing of affidavit of the principal becomes must without which the Power of Attorney cannot be permitted to conduct the proceeding/E.P and represent the principal.

7. Even in the Authority referred by the petitioner, in para No.15, it is observed that “if an agent is authorized to undertake the signing of pleadings, adducing of evidence and advancing of arguments, the agent shall be permitted in writing and “the party has to file an affidavit” that he has duly authorized the agent to represent him instead of an advocate, is fortifying the view observed above.

8. Thus the objection raised by the office found proper and sustainable. However, to extend an opportunity, petitioner is permitted to comply the objection on or before 18-08-2017 and in the event of failure, this petition stands returned.”

Aggrieved thereby, the decree holder is before this Court by way of this civil revision petition under Section 115 CPC.

As the E.P. itself is yet to be numbered and it appears that the same was filed within two years of the decree, we are of the opinion that the respondents/judgment debtors need not be put on notice at this stage or be afforded an opportunity of hearing.

Sri G.Purushotham Reddy, learned counsel for the petitioner/de decree holder, would place reliance on S.Sudharshan Rao v. Citizen Co-operative Society Ltd.¹ in support of his contention that the Executing Court ought not to have insisted upon compliance with Rule 33 of the Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980, by requiring the party, namely Shriram Transport Finance Company Limited, to file an affidavit that it has duly authorised the agent, Ivaturi Sai Subrahmanyam, the GPA holder, to represent it.

Perusal of the decision in S.Sudharshan Rao¹ reflects that a Division Bench of this Court examined the provisions of Order 21 Rule 11 CPC and noted that the application for execution of a decree is required to be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

It is not in dispute that Ivaturi Sai Subrahmanyam is the GPA holder of Shriram Transport Finance Company Limited, which was represented even in the arbitration proceedings by a GPA holder. It

¹ 2016 (4) ALD 206 (DB)

cannot therefore be doubted that such a GPA holder would be sufficiently acquainted with the facts of the case. It is relevant to note that the Division Bench in S.Sudharshan Rao¹ also held that power is conferred on the Civil Court to enforce a decree based upon an application taken out in writing by a person who is acquainted with the facts of the said case and not necessarily by the very same person who may have been authorized to institute the original suit proceedings.

In the light of this clear mandate, the Executing Court cannot insist upon an affidavit being filed by the company in proof of it having authorized the GPA holder to maintain the execution petition before it. A pedantic approach and a hidebound interpretation of Rules 32 and 33 of the Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980, was not at all required in the case on hand.

The civil revision petition is accordingly allowed. The Executing Court is directed to follow the mandate of this Court in S.Sudharshan Rao¹ and if the E.P. presented by the petitioner/decreed holder is otherwise found to be in order, the Executing Court shall number the same and take further steps thereon in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

J.UMA DEVI ,J

Date:20.11.2017

Note:-

Office is directed to return the originals filed by the petitioner in this case.

(B/o)

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