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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.4193 of 2017 (O&M)

Date of Decision: August 24, 2017

Jagpal Singh and another

. . . Petitioners

Versus

Alka Jain and others

. . . Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. M.L. Saggar, Senior Advocate,
Mr. Mohan Jain, Senior Advocate assisted by
Mr. Navdeep Singh Gill, Advocate and
Mr. Rajesh Punj, Advocate
for the petitioners.

Mr. Veneet Soni, Advocate
for the respondents.

RITU BAHRI, J.

This revision petition has been filed by the petitioners under Article 227 of Constitution of India, for quashing of the order dated 19.05.2017 (**Annexure P-16**) passed by the Civil Judge (Senior Division), Ratia, Fatehabad, whereby the application to decide Issue No.1(a) framed on 05.05.2017 as preliminary issue, has been dismissed.

Issue No.1(a) was with regard to validity of General Power of Attorney (GPA) executed in favour of Shri Nikhil Garg. The trial Court has dismissed the application on the ground that whether the alleged

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power of attorney is valid or not is a mixed question of law and facts, and the same can only be decided after adducing the evidences.

Learned Senior counsel for the petitioners states that this Court vide order dated 19.04.2017 (**Annexure P-13**) passed in Civil Revision No.1355 of 2017 has disposed of the petition with liberty to the parties that if they are so aggrieved of re-framing of the issues after filing of the replication, as also giving liberty to the parties to challenge the order whereby issues are reframed. Subsequently, vide order dated 19.04.2017 (**Annexure P-14**) passed in Civil Revision No.1544 of 2017, whereby order dated 01.06.2017 was set aside and present petitioners were granted permission to file replication to the written statement. Pursuant to the above said orders at **P-13 and P-14**, an additional issue regarding validity of alleged power of attorney was framed by this Court vide order dated 05.05.2017, extracted as under:-

1(a) Whether the power of attorney in favour of Sh. Nikhil Garg, is valid?OPD

Learned Senior counsel for the petitioners have argued that GPA (**Annexure P-2**) has not been signed on every page and as per the Power of Attorney' Rules, 1969. Each page of power of attorney is to be signed and, wherever, the blanks are filled in initiated by the Granter and should have filed the GPA through the Superintendent of District Judge and as per General Power of Attorney' Rules, agreement of sale made on 22.01.2011, it should have been made to the Court of District Judge. Hence, if the power of attorney itself is not valid in the present suit, issue with regard to power of attorney should be framed. Reliance is also placed

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on 2001 (60) DRJ 756 titled as 'K. V. Kohli (deceased) through his LRs Vs. State and others', 1989 AIR (A.P.) 286 titled as 'M/s Hyderabad Asbestos Cement Products Ltd., Hyderabad Vs. Mohamad Argobasi Enterprises and another' and Karnataka High Court in T.L. Nagendra Babu Vs. Manohar Rao Pawar decided on 16.12.2004.

Learned counsel for the respondents, at the same time, has argued that the GPA has been duly endorsed by the Notary Public California and it has been presented in accordance with the Rules of 1969.

After hearing the learned counsel for the parties, this Court is of the considered opinion that the judgments referred by learned counsel for the petitioners will not be applicable in the present case. In these cases, issue regarding validity of power of attorney was to be treated as preliminary issue.

In 'K.V. Kohli (Deceased) through his LRs Vs. State and Others', 2001(60) DRJ 756, the dispute was with regard to restoration of probate petition and the order was passed in this case. The appropriate petition was filed on 02.12.1987. The petition was dismissed in default on 13.05.1992 and thereafter application under Order 9 Rule 9 CPC was moved on 17.08.1993, after a lapse of 15 months by Sh. Vinod Nair claiming to be the attorney of Mini Kohli. The application for restoration was objected to on the ground that there was Vakalatnama only on behalf of Mini Kohli in favour of Mr. Kirti Uppal, Advocate and not on behalf of other LRs. On 03.07.1995, the Registrar of Delhi High Court was directed to go into the question of satisfaction of power of attorney. Keeping in view the procedure and legality was to be gone into by the Trial Court and

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being a mixed question of facts and law, it was ordered that it be decided by way of a preliminary issue. The restoration application based on restoration of defective power of attorney was examined and the power of attorney was rightly ordered to be decided first.

In *M/s Hyderabad Asbestos Cement Products Ltd., Hyderabad Vs. Mohamad Argobasi Enterprises and another*, **1989 AIR (A.P.) 286**, plaintiff had filed a suit against M/s Hyderabad Asbestos Cement Products Ltd., Hyderabad Vs. Mohamad Argobasi Enterprises and another and in one of the issue, issue No. 6 was whether the plaint has been instituted by a person validly representing the plaintiff and under Rule 2 Order 14 while exercising the powers, the Trial Court was directed at first to decide the preliminary objection with regard to issue No.6 (whether the plaint has been instituted by a persons validly represented by the plaintiff).

In both these cases, the initiation of the civil proceedings were doubtful on account of genuinity of power of attorney and hence, the issue regarding valid power of attorney is fairly directed to be decided first.

The plaintiffs have filed a suit for specific performance of agreement to sell dated 22.01.2011 entered into between the parties for a total sale consideration of Rs. 90.00 lacs and Rs. 50.00 lacs was paid to the defendant as earnest money and rest of the amount was to be paid at the time of execution of the sale deed i.e. when defendant will visit India in January/February 2013/2014 as he was resident of USA. The petitioners came to know that Satpal Jain died during the aforesaid period

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and the defendants/respondents were bent upon to alienate and transfer the suit property and hence the civil suit (Annexure P-1) was filed for specific performance of agreement to sell on 17.11.2014. The plaintiffs have to prove their case by leading evidence.

The issue with regard to the validity of the GPA is not necessary to be decided as a preliminary issue at this stage as the plaintiffs have to lead evidence first for proving their case.

Learned counsel for the petitioners has further argued that as per the Power of Attorney' Rules, 1969, when power of attorney is to be executed by an NRI in India, it has to be executed on a non-judicial stamp paper of the requisite value as per the stamp duty prevalent in the respective State. Each page of the Power of Attorney is to be signed and wherever the blanks are filled in initiated by the Grantor (applicant executing the Power of Attorney). The Power of Attorney should be signed by the Attorney on the last page and when the Power of Attorney is executed outside India by an NRI, it has to be signed on a plain paper. Each paper of power of attorney is to be signed and wherever the blanks are filled in initiated by the Grantor and the signatures of the Granter should be attested by an authorized official of the Indian Embassy/Indian Consulate/Trade Commissioner of India in the country where the Grantor resides and the Power of Attorney sent to India where the Attorney signs the Power of Attorney on the last page. The power of attorney then needs to be stamped and notarised by the Notary Public.

The above said instructions whether the Power of Attorney is as per Rules, 1969 or not, can be looked into by the trial Court after

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recording the evidence of the plaintiffs and if the Power of Attorney is not as per Rules, 1969, the defence of the defendants can be struck off.

In view of the above, no ground to interfere in the impugned order dated 19.05.2017 **(P-16)** is made out, whereby the trial Court has dismissed the application to treat issue No.1(a) framed on 05.05.2017 as a preliminary issue

Revision petition stands dismissed.

[RITU BAHRI]
JUDGE

August 24, 2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No