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SANJAY KUMAR, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
+ CIVIL REVISION PETITION No.1967 OF 2018

% DATED 27th JULY, 2018

Between:

Mrs. Ruhina Khan and another ... Petitioners

and

\$ Abdur Rahman Khan and others ... Respondents

< Gist:

> Head Note:

! Counsel for petitioners : Sri Ghanta Rama Rao and
Sri Mohd. Islamuddin Ansari

^ Counsel for respondent No.1 : --

^ Counsel for respondent Nos.2 and 5 : Sri Vedula Venkataramana and
Sri P.Raghavendra Reddy

^ Counsel for respondent Nos.3, 4,
6, 7, 8, 9, 10 and 11 to 55 : --

? CASES REFERRED:

1. 2010 SCC OnLine MADRAS 6009 = (2011) 3 MLJ 34
2. AIR 1943 CAL 13
3. AIR 1948 MAD 369
4. AIR 1939 NAG 242
5. AIR 1941 NAG 159
6. 1988 (1) K.L.T. 673
7. AIR 1962 KER 19
8. (2008) 3 MLJ 177 = (2008) SCC OnLine MAD 6
9. 2016 SCC OnLine Ker 29043
10. (1996) 6 SCC 665
11. ILR 1999 Karnataka 107 = 2011 SCC OnLine Karnataka 1
12. AIR 1997 SC 3
13. AIR 1971 AP 49
14. 1990 (1) An. W. R. 256
15. 1977 (1) APLJ 32 N.R.C.
16. 2014 (3) ALD 29 = 2014 (4) ALT 535
17. 2003 (6) ALD 796
18. 2011 (4) ALD 61 (DB) = 2011 (2) ALT 405
19. 2012 (4) ALD 553 (DB) = 2013 (4) ALT 24 (DB)
20. 2003 (4) ALD 302 (DB)

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.1967 OF 2018

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 06.03.2017 passed by the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.716 of 2017 in O.S.No.38 of 1993 (Old O.S.No.721 Of 1983). The petitioners are plaintiff Nos.14 and 15 in the said suit. They filed the subject I.A. under Rule 32 of the Andhra Pradesh Civil Rules of Practice and Circular Orders (*hereinafter*, 'the Civil Rules of Practice') seeking permission to be represented by their General Power of Attorney (GPA) holder. By the order under revision, the trial Court held against them and dismissed the I.A. Aggrieved thereby, they are before this Court.

By order dated 29.03.2018, this Court granted stay of further proceedings in the suit taking note of the apprehension of the petitioners/plaintiff Nos.14 and 15 that the injunction petition filed by them may be dismissed on the strength of the dismissal of the subject I.A.

Heard Sri Ghanta Rama Rao, learned senior counsel representing Sri Mohd. Islamuddin Ansari, learned counsel for the petitioners/plaintiff Nos.14 and 15, and Sri Vedula Venkataramana, learned senior counsel representing Sri P.Raghavendra Reddy, learned counsel for respondent Nos.2 and 5/plaintiff Nos.5 and 8. Respondent Nos. 3, 4, 6, 7, 8 and 9 are the siblings of respondent Nos. 2 and 5, being the progeny of deceased Respondent Nos.1 and 10. Respondent Nos.11 to 55 in the revision are shown as not necessary parties.

Parties shall hereinafter be referred to as arrayed in the suit.

Plaintiff Nos.14 and 15 are residents of the United States of America (USA). They executed a GPA on 11.05.2017 authorizing one Salam M.Bawazir to look after their Court cases and their property in Miyapur Village, Serilingampally Mandal, Ranga Reddy District. This GPA was executed before a Notary Public in the State of California, USA. The GPA was thereafter presented before the District Registrar, Ranga Reddy District, and was validated by him. On the strength of this GPA, the subject I.A. was filed, supported by the affidavit of the GPA holder.

Plaintiff No.8, being respondent No.5 in the I.A., filed a counter-affidavit on behalf of himself and his siblings contesting the I.A. He contended that the predecessor-in-title of plaintiff Nos.14 and 15, namely, late Sayeedunnisa Begum, plaintiff No.3, had relinquished her rights in the family property, *vide* registered relinquishment deed dated 31.03.1971, when she left for USA and that she was only added as a *proforma* party. He further contended that plaintiff Nos.14 and 15, having been brought on record as her legal representatives upon her death, were not entitled to claim any rights in the family property which was the subject matter of the partition suit in O.S.No.38 of 1993. Lastly, he contended that the GPA executed by plaintiff Nos.14 and 15 was not in accordance with law.

The trial Court thereupon framed the point for consideration as to whether the plaintiff Nos.14 and 15 could be permitted to be represented by their GPA holder as prayed for. The trial Court took note of the fact that the suit schedule property in Survey Nos.48, 19, 44, 45, 56, 77, 87, 88, 92, 93, 94, 95, 97, 98, 117/1, and 117/2 of Miyapur Village was the subject matter of the present GPA executed by plaintiff Nos.14 and 15 while the earlier GPA executed by them was only in relation to the land in Survey No.45. The trial Court found that the GPA holder as per both the

GPA was one and the same, but there was no explanation as to why two separate GPAs had been executed in his favour. The trial Court noted that the land in Survey No.45 of Miyapur Village found mention in both the GPAs and opined that as one GPA was already in existence for Survey No.45, it was the duty of the principals to cancel the said GPA if they wanted to execute a fresh GPA for the land in Survey No.45 along with the land in the other survey numbers. The trial Court further held that the GPA was not sufficiently stamped as it was executed on a non-judicial stamp paper worth Rs.100/- and despite validation by the District Registrar, no further stamp duty was collected thereon. On the aforesaid reasoning, the trial Court held that the request of plaintiff Nos.14 and 15 to be represented by their GPA holder could not be considered and accordingly dismissed the I.A.

Significantly, no argument was advanced before the trial Court as to non-compliance with the requirements of Rules 32 and 33 of the Civil Rules of Practice. However, as the said aspect has been canvassed *in extenso* before this Court, it would be appropriate to deal with the issue.

Order 3 CPC deals with recognised agents and pleaders. Order 3 Rule 1 CPC states that any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party-in-person, or by his recognised agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. Order 3 Rule 2 CPC states that recognised agents of parties by whom such appearances, applications and acts may be made or done are, amongst others, persons holding powers-of-attorney authorising them to make and do such appearances, applications

and acts on behalf of such parties. Order 3 Rule 6 CPC deals with the power of the agent to accept service. Sub-rule (1) thereunder states that besides recognised agents described in Order 3 Rule 2 CPC, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process. Order 3 Rule 6(2) CPC provides that such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court. Order 6 Rule 14 CPC states that every pleading shall be signed by the party and his pleader, if any. The *proviso* thereto, however, states that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. Order 6 Rule 15 CPC deals with verification of pleadings and sub-rule (1) thereof provides that every pleading shall be verified at the foot by the party or by any of the parties pleading or by some other person, proved to the satisfaction of the Court, to be acquainted with the facts of the case. Order 6 Rule 15(4) CPC states that the person verifying the pleading shall also furnish an affidavit in support of his pleadings.

Chapter III of the Civil Rules of Practice deals with 'Advocates and Recognised Agents'. Rules 32 and 33 therein are extracted hereunder:

'32. Party appearing by Agent:-

(1) When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorising him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and

that no other agent is expressly authorised to make or do such appearance, application, or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognised by the Court.

33. Signing or verification by Agent:-

If any proceeding, which under any provision of law or these rules, is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in court, together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceeding, and stating the means of knowledge or the facts set out in the proceeding of the person signing or verifying the same and that such person is a recognised agent of the party as defined by Order III, Rule 2 of the Code and is duly authorised and competent so to do.'

In effect, Rule 32 deals with an agent other than an Advocate appearing for a party while Rule 33 deals only with signing or verification of proceedings by an agent. Rule 32(1) makes it clear that it has application to a situation where a party appears by an agent other than an Advocate. Therefore, the said agent would appear for the party in all respects and not merely for the purpose of signing and verifying pleadings. When the party appears through an agent other than an Advocate, the agent is required, before he appears or acts in the Court or makes an application thereto, to file the power of attorney or written authority or a properly authenticated copy thereof along with an affidavit that the said authority, whereby he is empowered to do so, is still subsisting. In the event of an agent carrying on a trade or business on behalf of a party without a written authority, an affidavit stating the residence of his principal; the trade or business carried on by the agent on his behalf; the connection of the same with the subject matter of the suit; and that no other agent is authorised to make or do such appearance, application or act, shall be filed. Rule 32(2) provides that the Judge may thereupon record in writing that the agent is permitted to appear and act

on behalf of the party and unless and until the said permission is granted, no appearance, application or act of the agent shall be recognised by the Court.

Rule 33 deals with an agent signing and verifying on behalf of his principal and states that if any proceeding, which under any provision of law or the Civil Rules of Practice, is required to be signed or verified by a party but is signed or verified by the agent, a written authority in this behalf signed by the party shall be filed in Court, together with an affidavit verifying the signature of the party and stating the reason of his inability to sign or verify the proceeding and stating the means of knowledge of the facts set out in the proceeding of the person signing or verifying the same and that such person is a recognised agent of the party, as defined by Order 3 Rule 2 CPC, and is duly authorised and competent to do so.

The issue presently is as to what is the nature of the procedure prescribed by Rules 32 and 33 of the Civil Rules of Practice. Should it be construed to be merely directory or mandatory to the extent of holding non-compliance therewith to be fatal?

In *K.SANTHANAM V/ s. S.KAVITHA*¹, a learned Judge of the Madras High Court had occasion to deal with this issue. Referring to Rules 16 and 17 of the Civil Rules of Practice framed by the Madras High Court, which are in *pari materia* with Rules 32 and 33 of our Civil Rules of Practice, the learned Judge considered the issue of non-compliance with these rules and the consequences thereof. The trial Court had allowed an application permitting the GPA holders to prosecute the suit on behalf of the plaintiff on the basis of a rectified GPA. The learned Judge observed that even in the absence of a power of attorney, a party to a suit is

¹ 2010 SCC OnLine MADRAS 6009 = (2011) 3 MLJ 34

entitled to have the pleading signed on his behalf by any person duly authorised by him to do so. Holding that it is well settled that defective presentation of a plaint cannot result in its rejection, the learned Judge opined that a defect which is curable in nature would not fall within the ambit of Order 7 Rule 11 CPC, which enumerates the situations where a plaint can be rejected. The learned Judge further observed that an error of procedure is merely an irregularity which can be cured. Reference was made to *BENGAL JUTE MILLS V/ s. JEWRAJ HEERALAL*², *SUBBIAH PILLAI @ S.S.M. SUBRAMANIA PILLAI V/ s. SANKARAPANDIAM PILLAI*³, *SARJUPRASAD V/ s. BADRI PRASAD*⁴ and *NETRAM V/ s. BHAGWAN*⁵, wherein it was held that a plaintiff can orally authorise another person to sign a plaint for him. The learned Judge therefore held that it would always be open to a principal to ratify the act of the agent, by producing an authenticated power of attorney.

In *NARAYANAN NAIR V/ s. JOHN KURIEN*⁶, the Kerala High Court dealt with non-compliance with a similar provision akin to Rule 33 of our Civil Rules of Practice contained in the Kerala Civil Rules of Practice. The Kerala High Court observed that the rule applied only to cases where proceedings are required to be signed or verified by the parties concerned and could not be imported into a case where the plaint or written statement can be signed, as sanctioned by substantive law, by any other person duly authorised by the party. Reference was made to Order 6 Rule 14 CPC which permits such a course to be adopted in making the pleadings and the Kerala High Court observed that its scope could not be curtailed or restricted by unduly reading the Civil Rules of Practice into it.

² AIR 1943 CAL 13

³ AIR 1948 MAD 369

⁴ AIR 1939 NAG 242

⁵ AIR 1941 NAG 159

⁶ 1988 (1) K.L.T. 673

It was further observed that the sanction offered by substantive law could not be stultified by resort to the rules framed under such law. Referring to the *proviso* to Order 6 Rule 14 CPC, the Kerala High Court pointed out that the same did not even require production or even creation of a power of attorney or written authorisation and there was nothing to suggest that a written authorisation is indispensable for proper compliance therewith. The Kerala High Court found that case law seemed to support the view that even oral authorisation would be sufficient. Distinguishing the earlier judgment of the Kerala High Court in *IYAKKU MATHOO V/ s. JULIUS*⁷, which held to the effect that absence of a written authority was a defect in constituting due authorisation, the Kerala High Court pointed out that the said case related to a suit instituted on behalf of a plaintiff residing abroad permanently and concluded that there would be sufficient compliance with the requirements of Order 6 Rule 14 CPC if there is satisfactory material to show that the signatory to the plaint had the authority of the plaintiff to sign the plaint on his behalf and such authority need not necessarily be in writing.

In *MRS.SUJATHA JAYAKUMAR V/ s. KARNATAKA SOAPS AND DETERGENTS LTD.*⁸, a learned Judge of the Madras High Court was dealing with a case where the suit had been filed by the power of attorney agent of the plaintiff, who had verified the plaint and signed the vakalat on its behalf and had also filed an application for leave of the Court to sign and verify the pleadings but the same had not been ordered by the trial Court. The defendant in the suit contended that the plaintiff could not maintain the suit as the power of attorney holder was not permitted to sign the plaint. This objection was raised by the defendant at

⁷ AIR 1962 KER 19

⁸ (2008) 3 MLJ 177 = (2008) SCC OnLine MAD 6

the stage of cross-examination of P.W.1. The learned Judge held that the procedure adopted by the Court below in not ordering the leave application before proceeding further was irregular but the same would not go to the root of the case. Observing that the Court below could allow the application even at that stage as the trial was not over, the defendant's contention was rejected.

FOCAL IMAGE INDIA PVT. LTD. V/ s. FOCAL IMAGE LTD.⁹ is a decision to the contrary. Therein, a learned Judge of the Kerala High Court was dealing with a case where the plaint had been presented defectively by the power of attorney holder and only after the appearance of the defendant, an attempt was made to cure the said defect. The learned Judge framed the question as to whether the plaintiff could be allowed to verify the pleadings and sign the plaint after the appearance of the defendant in the suit. Opining that an inherent defect which would vitiate the original presentation of the suit could never be cured subsequently, the learned Judge observed that it was an admitted fact that the institution of the suit was inherently defective. The learned Judge further observed that there was no provision either in the CPC or in the Civil Rules of Practice framed by the Kerala High Court, which permitted the plaintiff to verify and sign the pleadings after the appearance of the defendant in the suit. The learned Judge held that the institution of a plaint by an unauthorised agent is an inherent and incurable defect which could vitiate the institution of the plaint itself and therefore, the plaintiff who instituted an inherently invalid and defective plaint through an unauthorised agent could not be allowed to make the plaint valid and perfect by his subsequent act, on the basis of an objection raised by the

⁹ 2016 SCC OnLine Ker 29043

defendant. The learned Judge observed that a plaint instituted by an agent is liable to be rejected *in limini* unless he is duly authorised and the power of attorney or other written authority is produced in Court to that effect at the time of institution of the plaint itself, as the institution of such a plaint by an unauthorised agent is barred by Order 3 Rules 1 and 2 CPC and Rules 22 and 23 of the Kerala Civil Rules of Practice (similar to Rules 32 and 33 of our Civil Rules of Practice). The learned Judge distinguished the decision of the Supreme Court in *J.K.INDUSTRIES LTD. V/ s. CHIEF INSPECTOR OF FACTORIES AND BOILERS*¹⁰, pointing out that in that case, an officer of the Corporation, referred to in Order 29 Rule 1 CPC, signed the defective plaint which could be ratified by the Corporation thereafter so as to make the institution of the suit valid. But, in the case before him, a stranger to the company, who had no authority to institute the suit, did so in its discretion. Reference was made to *NARAYANAN NAIR*⁶, wherein the Kerala High Court had observed that the only question to be determined is whether a person who signed the plaint was the duly authorised agent of the person who figures as the plaintiff therein and if the answer is in the negative, the suit is liable to be dismissed for want of a valid plaint. The learned Judge therefore held that the plaint was liable to be rejected.

In *KITHANIA TEXTILES V/ s. EAST INDIA TRANSPORT AGENCY*¹¹, a learned Judge of the Karnataka High Court was considering the question as to whether a Regional Manager of a company, on the basis of a special power of attorney executed in his favour by the company, would be competent to sign and verify the plaint in a suit filed on behalf of the company. Considering Order 29 Rules 2 and 3 CPC, the

¹⁰ (1996) 6 SCC 665

¹¹ ILR 1999 Karnataka 107 = 2011 SCC OnLine Karnataka 1

learned Judge opined that a Joint Director, Secretary or other Principal Officer of a company would not need any specific authorisation to sign or verify the pleadings, as these persons are endowed with status of responsibility and trust. Further, the learned Judge was of the opinion that any other officer of the company who is specifically authorised in respect thereof may also sign and verify the pleadings. As the Manager in that case produced the Resolution of the company authorising him to sign and verify the pleadings, the learned Judge concluded that it was not necessary to produce a power of attorney.

In UNITED BANK OF INDIA V/ s. NARESH KUMAR¹², the Supreme Court went to the extent of holding that by virtue of Order 6 Rule 14 CPC, read with Order 29 Rule 1 CPC, signing and verification of a plaint by a person holding office could be accepted, even in the absence of a formal letter of authority or power of attorney.

Closer home, in M.PARTHASARTHI V/ s. THE STATE OF A.P. REPRESENTED BY SECRETARY, EDUCATION DEPARTMENT, HYDERABAD¹³, a learned Judge of this Court was dealing with an office objection where fourteen persons who filed the writ petition signed on the vakalat but only one of them signed and verified the writ petition, stating that he was doing so for himself and on behalf of the other petitioners. An authorisation letter purporting to be under Rule 17 of the Civil Rules of Practice and Order 6 Rule 14 CPC signed by the other petitioners was also filed. The office took an objection that either all the petitioners should sign and verify the writ petition or they should file an affidavit or a power of attorney authorising one of them to sign and verify the writ petition. The office also objected to the letter of authorisation on the ground that it did

¹² AIR 1997 SC 3

¹³ AIR 1971 AP 49

not constitute sufficient compliance with the rules. Dealing with these objections, the learned Judge observed that it is not only a rule of convenience but also one of prudence to insist upon production of a power of attorney or an affidavit evidencing the claim of the party who signs and verifies the petition that he has been duly authorised by the other petitioners to do so. Observing that if a party is unable to sign a writ petition himself, any person duly authorised by him could do so and as the CPC does not define the words 'duly authorised', execution of a power of attorney could certainly be 'due authorisation', as it is universally accepted by law. As to what other modes of 'due authorisation' could be adopted by law and whether a mere letter of authorisation is one such mode of 'due authorisation' was stated to be the question to be considered. The learned Judge observed that the Court's anxiety is to ensure that the facts alleged by the petitioners are duly verified and such verification is duly done by an affidavit, which is a sworn affidavit. However, a mere letter of authorisation, though purported to be signed by the other petitioners, is neither a sworn statement of those persons nor is it signed in the presence of a recognised authority. Thus, insistence upon filing of a power of attorney or on a sworn affidavit was stated to be a rule of convenience as well as of prudence. The learned Judge therefore summed up that it would be reasonable to assume that the words 'duly authorised' in Order 6 Rule 14 CPC require that such authorisation should be in some form analogous to the requirements of Rule 52 of the Appellate Side Rules which states that if a petition is presented by a party, it shall be signed or marked by him and such signature or mark shall be acknowledged before the Registrar or some other functionary who shall certify therein that the contents of the petition were explained by him or the signature or mark of

the petitioner was made or acknowledged before him. Reference was made by the learned Judge to Rule 17 of the Madras Civil Rules of Practice, which was applicable in the state of Andhra Pradesh at that point of time, which required that if any proceeding which is required to be signed or verified by a party is signed or verified by any person on his behalf, the written authority in this behalf shall be filed in the Court together with an affidavit verifying the signature of the party and stating the reason of his inability to sign or verify the proceedings. The learned Judge observed that this Rule threw much light on the problem to be resolved as it requires that a written authority signed by the party, who is unable to himself sign or verify the proceedings, together with an affidavit stating the reasons of his inability for signing and verifying the proceeding himself, has to be filed. The learned Judge observed that no reason is conceivable for making a distinction between this procedure that is made applicable to the Courts of first instance and the procedure that has to be followed in signing and verifying writ petitions. The learned Judge accordingly concluded that it is not only a rule of convenience and prudence but also a logical consequence of the relevant rules that a party, who is unable to sign the writ petition himself, should either file a power of attorney or an affidavit stating the reason for his inability to personally sign and verify the petition and authorising some other person to sign and verify on his behalf. The learned Judge referred to the commentary on the Code of Civil Procedure, 1908, by the learned author Mulla, 13th Edition, and observed as under:

‘The signing of plaints is merely a matter of procedure. If a plaint is not signed by the plaintiff or by a person duly authorised by him in that behalf, and the defect is discovered at any time before judgment, the Court may allow the plaintiff to amend the plaint by signing the same. If the defect is not discovered until the case

comes on for hearing before an appellate Court, the appellate Court may order the amendment to be made in that Court. The appellate Court ought not to dismiss the suit or interfere with the decree of the lower Court merely because the plaint has not been signed. The omission to sign or verify a plaint is not such a defect as could affect the merits of a case or the jurisdiction of the Court.'

The learned Judge further observed that signing and verifying of a plaint is only a matter of procedure but nevertheless, it is the requirement of law. If the failure of the plaintiff to sign and verify the plaint is discovered at any stage, it should be permitted to be corrected. The learned Judge finally summed up as under:

'12. There is, therefore, no doubt in my mind to hold that in order to avoid all future difficulties, doubts or complications it is essential for the parties to prove 'due authorisation' by producing a Power of Attorney or a sworn affidavit of the party who is not personally signing and verifying the petition.

13. Even so, learned counsel submitted that the requirement of filing an affidavit has been satisfied in this case by the fourth petitioner who has filed and verified the petition on behalf of the other petitioners, has himself filed an affidavit stating that the other writ petitioners have authorised him to sign and verify the writ petition. But such an affidavit by a person who is actually signing and verifying the petition does not meet the requirements of the situation. What is required is the affidavit of the party or parties who is or are not signing and verifying. Otherwise, the very purpose for which such an affidavit is required is likely to be defeated. After all, the fourth petitioner, who is swearing to the affidavit has already signed the petition and it would not be difficult for him to swear to another affidavit. If the Court is to be satisfied that the parties had authorised him to sign and verify the petition on their behalf, it is their affidavit that is essential to prove such authorisation and not the affidavit of the person who has come forward that he has got a representative capacity.

14. For the reasons, I answer the reference by holding that if some of the parties to the writ petition do not personally sign and verify it, but authorise somebody else to sign and verify on their behalf either a Power of Attorney or an affidavit sworn by them in the presence of an attesting Officer or functionary recognised by law stating the reasons for their inability to sign and verify the petition personally and authorising another person to sign and verify on their behalf, should be filed.'

In JANAB SYED KAZIM SAHAB V/s. JANAB SAYEED BAKARAM SAHAB¹⁴, one of the questions that fell for consideration before a learned Judge of this Court was whether the suit filed by the plaintiffs was defective in the absence of permission of the Court, as one of them was represented by a power of attorney holder, but no leave was sought by him under Rule 32 of the Civil Rules of Practice. The plaint itself was signed by the GPA holder. The learned Judge opined that as an Advocate and not the power of attorney holder appeared for the principal, viz., the second plaintiff in the suit, Rule 32 of the Civil Rules of Practice had no place and consequently, permission from the Court was not mandatory under such circumstances. The learned Judge observed that Rule 33 is an additional provision which is not repugnant to the provisions of the CPC and that the presentation of the plaint, signed and verified by the power of attorney holder coupled with the very power of attorney executed in his favour filed in the Court, would not require any permission from the Court, as an Advocate, duly appointed by the said power of attorney holder, entered appearance in the Court for the principal plaintiff but in order to hold the said plaint to be valid, it must be accompanied by an affidavit of the executant of the general power of attorney in terms of Rule 33. The absence of the said affidavit would not invalidate the suit resulting in dismissal thereof as no objection had been taken with regard to non-compliance with Rule 33. The learned Judge therefore concluded that the defendant could not be allowed to raise the objection at the time of appeal as he should be deemed to have been waived the same.

In M.LAXMA REDDY V/s. BAQUR ALI BAQURI¹⁵, it was observed that a pleader can be validly appointed by the power of attorney

¹⁴ 1990 (1) An. W. R. 256

¹⁵ 1977 (1) APLJ 32 N.R.C.

or agent who is authorised to do so and it is only in cases where the party appears by an agent other than a pleader or Advocate that the provisions of Section 16(1)(2) apply. It was found that the requirement of the rules had been complied with as the power of attorney as well as the affidavit of the plaintiff had been filed.

More recently, in *G.PURNACHANDER V/ s. SYNDICATE BANK, WARANGAL BRANCH*¹⁶, a learned Judge of this Court dealt with the question as to whether the plaint in that suit was signed and presented by a competent person. The plaintiff was a bank and its Manager verified the pleadings and signed the vakalat on its behalf. The learned Judge opined that the Branch Manager of the bank was competent to represent the bank and the irregularity in not seeking leave would not go to the root of the case. Reference was made to *MD.MUNAWAR HUSSAIN V/ s. USHA KIRAN CHIT FUNDS, SATHUPALLI, KHAMMAM DISTRICT*¹⁷, wherein it was held that if the civil Court did not follow the procedure contemplated under Rule 32 of the Civil Rules of Practice and only after numbering of the suit, the issue was raised, the irregularity in proceeding with the suit would not go to the root of the case. The contention that the judgment passed in such a suit would be contrary to Rule 32 was not accepted. In view of this judgment, the learned Judge opined that institution of a suit and verification of the pleadings by a competent person is to be looked into before registration of the plaint and any such contention cannot be gone into after registration of the plaint as it would not go to the root of the case.

¹⁶ 2014 (3) ALD 29 = 2014 (4) ALT 535

¹⁷ 2003 (6) ALD 796

In MADUPU HARINARAYANA @ MARI BABU V/ s. LEARNED 1st ADDITIONAL DISTRICT JUDGE, KADAPA¹⁸, a Division Bench of this Court dealt with a GPA's right of audience before a Court of law. Reference was made to the definition of 'Power-of-Attorney' in the Powers-of-Attorney Act to include any instrument empowering a specified person to act for and in the name of the person executing it. Adverting to Rule 33 of the Civil Rules of Practice, the Division Bench observed that when pleadings are verified and signed by a person under a written authority, such document should be filed with an affidavit of the authority holder to the effect that such person is a recognized agent of the party, as defined in Order 3 Rule 2 CPC. Holding that it is well settled that a GPA holder can sign and verify the pleadings, sign affidavits, instruct Advocates to whom vakalat is issued, the Division Bench observed that he could do no more as he could not give evidence on behalf of the party to the proceedings who had given the power of attorney. The Division Bench therefore held that a GPA in favour of a person to act for another person in a Court proceeding cannot be construed as authorising the holder of the GPA to argue a case in the Court.

Significantly, in NATUBHAI CHOTABHAI PATEL V/ s. PATNAM SHAKUNTALA¹⁹, the question referred to a Division Bench of this Court was whether the procedure contemplated under Rules 32 and 33 of the Civil Rules of Practice is mandatory or curable by moving an appropriate application and whether the Court, depending upon the facts and circumstances, can rectify the same. The factual matrix was that a suit for declaration of title and delivery of possession, apart from rectification of entries in the revenue records etc., was filed by the GPA holder but

¹⁸ 2011 (4) ALD 61 (DB) = 2011 (2) ALT 405

¹⁹ 2012 (4) ALD 553 (DB) = 2013 (4) ALT 24 (DB)

without obtaining the order of the Court permitting him to represent the plaintiff under Rule 32(1) of the Civil Rules of Practice. The defendant contended that the suit was *non est* in the eye of law as its very presentation was invalid. The trial Court however did not accede to the defendant's request and dismissed the I.A.

Reference was made by the Division Bench to SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF DEFENCE, NEW DELHI V/ s. INDIRA DEVI²⁰, wherein a Division Bench of this Court had held that when a GPA holder represents a party, the Court is required to record in writing that he is permitted to appear and act on behalf of the party and once a person files a suit on behalf of a party as a GPA holder, he enters into the shoes of that party and except to the extent of personal knowledge, he is entitled to depose on other facts. Observing that Rule 32 of the Civil Rules of Practice was introduced to discourage parties from appointing agents to represent them in Courts other than legal practitioners, the Division Bench pointed out that the wording of Rule 32 clearly indicated that the authorisation is for all purposes, including the filing of pleadings, examination of witnesses, marking of documents and advancing of arguments, which is generally expected to be performed by an Advocate, who is a legal expert. If the party is prepared to take the risk of authorising an agent other than an Advocate to undertake this exercise, the Bench was of the opinion that in order to make sure that the party did authorise the agent to represent him in the matter, an affidavit is necessary, but in cases of authorising an agent to sign the pleadings while authorising a legal practitioner to appear on his behalf, it is sufficient if the Court is satisfied that he was authorised to sign and in such a case,

²⁰ 2003 (4) ALD 302 (DB)

filing of an affidavit is not mandatory and the defect can be cured at a later stage also by convincing the Court that the agent was duly authorised by the party in that regard. Paras 14 and 15 of the judgment are relevant and are extracted hereunder:

14. In *Kamal Silk Mills v. Kuncham Mohana Rao*, 2002 (1) ALD 722 (DB), an order has been passed by the Court below showing that specific contention was raised by the judgment debtor claiming that the decretal amount was already discharged and he need not pay any amount towards the decree, but he failed to place before the Court as proof any receipt to that effect issued by the petitioner, and that no permission was obtained from the Original Court under Rule 32 of the Civil Rules of Practice authorizing the General power of Attorney holder to present on behalf of the original decree holder as long as the General Power of Attorney was in force, and that the Court below failed to notice that no such contention was ever raised in the suit, therefore, the High Court held that the judgment debtor was not to raise such a plea at the stage of execution of the decree.

15. A party generally represented by an Advocate. This provision enables an agent to represent the party. This provision has been introduced to discourage the parties to appoint the agents to represent them in the Courts than the legal practitioners. The wording “when a party appears by any agent other than an Advocate” used in Rule 32 clearly indicates that the authorization is for all purposes including the filing of the pleadings, examination of the witnesses, marking of the documents and advancing of the arguments, which is generally expected to be performed by an Advocate who is a legal expert in the field. If an agent represents the party, he may not know the implications and complications of the issues involved in the matter, thereby it is likely to cause injustice to the party. If the party prepares to take the risk of authorizing an agent, it is an indication that the party is prepared to reap the consequences by appointing an agent. In order to make sure that the party authorized the agent to represent him in the matter, an affidavit is necessary. But in cases of authorizing an agent to sign the pleadings while authorizing a legal practitioner to appear on his behalf, it is sufficient if the Court is satisfied that he was authorized to sign and in such a case, the filing of an affidavit is not mandatory, therefore, the defect can be cured at a later stage also by convincing the Court that the agent was duly authorized by the respective party in that matter. But 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. In case of a party executing a General Power of Attorney in favour of another person, the General Power of Attorney holder also cannot be permitted to represent the party in the suit for all purposes namely to sign the pleadings, to adduce evidence and to advance arguments unless an affidavit is filed by the party affirming that he

has authorized his General Power of Attorney holder to represent his case for the above purposes. But for mere signing of the pleadings on behalf of the party duly represented by an Advocate, permission from the Court is not necessary by way of filing an affidavit to that effect. It is sufficient if the Court is satisfied that the agent or power of attorney holder is duly authorized to sign the pleadings, after perusal of such authorization, which was filed along with the pleadings.

The aforestated portion of the judgment implies that the Division Bench dealt with only Rule 32 of the Civil Rules of Practice though the later part in Para 15 indicates that Rule 33 of the Civil Rules of Practice was also considered. This aspect is clear from the following observation made in paragraph 15 of the judgment:

'15. ... But in cases of authorizing an agent to sign the pleadings while authorizing a legal practitioner to appear on his behalf, it is sufficient if the Court is satisfied that he was authorized to sign and in such a case, the filing of an affidavit is not mandatory, therefore, the defect can be cured at a later stage also by convincing the Court that the agent was duly authorized by the respective party in that manner. ... But for mere signing of the pleadings on behalf of the party duly represented by an Advocate, permission from the Court is not necessary by way of filing an affidavit to that effect. It is sufficient if the Court is satisfied that the agent or power of attorney holder is duly authorized to sign the pleadings, after perusal of such authorization, which was filed along with the pleadings.'

As regards a situation falling under Rule 32 of the Civil Rules of Practice, the observation of the Bench in Para 15 may be referred to:

'15. ... But 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. ...'

In effect, the Division Bench held that where the GPA holder merely signs the pleadings in a case where the principal is represented by a legal practitioner it is sufficient if Court satisfies itself that he has the authority to sign such pleadings and the filing of an affidavit is not mandatory. Any

defect in this regard can also be cured at a later stage by convincing the Court that such GPA holder was duly authorized by the principal to represent him in the matter. However, in a case where the GPA holder not only signs the pleadings but also adduces evidence and advances arguments on behalf of the principal, he would necessarily have to file an affidavit of the principal affirming that he authorized the GPA holder to do so.

In the light of the principles emerging from the aforestated binding judgment, the final observation that Rule 32 of the Civil Rules of Practice is not mandatory seems to be an oversight as it is Rule 33 which was held to be not mandatory but no mention was made of the said Rule in the concluding paragraph. Rule 32, on the other hand, was clearly held to be mandatory as the Bench observed that when no legal practitioner appears for the principal and the GPA holder undertakes not only the signing of pleadings but also the job of a legal practitioner, he must necessarily file the affidavit of the principal authorizing him to do so.

Applying the aforestated principle to the case on hand, it is clear that the situation falls within the ambit of Rule 33 and not Rule 32 of the Civil Rules of Practice as plaintiffs 14 and 15 are represented by counsel and their GPA holder is merely signing pleadings on their behalf. Therefore, notwithstanding the fact that the said GPA holder himself signed the affidavit and not plaintiffs 14 and 15, it is not fatal. As long as the said GPA holder is able to demonstrate that he had the authority to sign such pleadings on behalf of his principals, sufficient compliance with Rule 33 of the Civil Rules of Practice is made out.

As regards the finding of the trial Court that the GPA dated 11.05.2017 is not valid as the earlier GPA executed in favour of the very

same GPA holder, in relation to one out of the several survey numbers, has not been cancelled, is not tenable. The subsequent GPA would prevail as the GPA holder is the same in both and no complications would arise. As regards the other observation of the trial Court with regard to sufficient stamp duty not being paid on the GPA dated 11.05.2017, perusal thereof reflects that the District Registrar and Collector under Section 42 of the Indian Stamp Act, 1899 (for brevity, 'the Act of 1899') certified on the back of the first page that the instrument was duly stamped. However, as the trial Court found that the earlier registered GPA was subjected to stamp duty to the tune of Rs.15,97,200/- and it pertained to only one out of the several survey numbers covered by the later GPA, the aspect needs further examination by the authorities under the Act of 1899. It would therefore be within the power of the trial Court to impound the said document under Section 33 of the Act of 1899 for examination as to the correct stamp duty payable thereon and take necessary steps under the Act of 1899 for such purpose.

Subject to this observation, the rejection of the GPA dated 11.05.2017 by the trial Court is set aside. This Court further finds that there is no violation of the procedure prescribed under Rule 33 of the Civil Rules of Practice, as there is no reason to doubt the authenticity of the GPA authorizing the very same GPA holder, who was appointed under the earlier GPA, to represent the principals in the suit in the context of the other survey numbers. However, as already stated *supra*, the trial Court shall take necessary steps under the Act of 1899 in relation to the said GPA in the context of the stamp duty payable thereon.

The civil revision petition is accordingly allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

27th JULY, 2018

Note: L.R. copy to be marked.
B/ o PGS

