

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No. 1267 of 2013

ORDER:

This petition is filed, questioning the docket order dated 04.03.2013 passed in O.S. No.674 of 2012. The Suit is filed for the permanent injunction. The matter was posted for the cross examination of the PW.1. The PW. 1 in the case is the General Power of Attorney (G.P.A.) holder of the plaintiff. At that stage, a memo was filed into the Court on 21.02.2013 by the Counsel for the defendants, stating that the GPA holder cannot give evidence on behalf of the plaintiff. Second objection raised under Order XVIII Rule 3 (A), stating that permission has to be obtained for examining the said witness before the original plaintiff is examined.

2. This Memo was dismissed on 04.03.2013. The Court below passed an order stating that the GPA holder can give evidence for the acts done by him and not by the principal. The Court also held that he cannot give evidence in respect of matters in which only the principal has personal knowledge. Questioning the said order the present Revision is filed.

3. This Court has heard Sri K.Sudershan Reddy, learned counsel for the petitioner. There is no representation to the respondents. The matter was passed over and again heard in the afternoon.

4. Learned counsel for the petitioner cited two judgment of the Hon'ble Supreme of India in **Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd., and others¹** and **S.Kesari Hanuman Goud v. Anjum Jehan and others²**. Relying on these two judgments, learned counsel argued

¹ AIR 2005 SC 439

² 213 4 ALD 150 (SC)

that the G.P.A. holder cannot give evidence. A close reading of both these cases shows that Hon'ble Supreme Court of India held that the Power of Attorney holder cannot depose in place of the principal. The Supreme Court of India clearly held that the G.P.A holder can depose about the matters in which he has personal knowledge. The Hon'ble Supreme Court clearly held that the Power of Attorney Holder cannot depose instead of the principal.

5. In the case on hand, it is an admitted fact that the principal is living abroad for 30 years. This is admitted by the learned counsel for the petitioner. There is a G.P.A holder, who is looking after the property of the principal.

6. In these circumstances, this Court is of the opinion that shutting out the evidence at the threshold cannot arise. Power of Attorney holder can give evidence about facts of which he has personal knowledge. He can depose about matters about which he has acted as a G.P.A. holder for the principal. He cannot depose on matters which are exclusively within the knowledge of the principal. This Court in a Revision, cannot at this stage ascertain which matters are in the personal knowledge of the principal and can be deposed only by the principal. If the G.P.A. holder had acted as an agent of the principal then definitely his evidence as an agent about the actions taken by him as a G.P.A holder are admissible. This is the purport of the order that is passed by the Lower Court also. Therefore, this Court is of the opinion that the G.P.A. holder cannot be prevented from giving evidence on matters in which he has personal knowledge or from deposing about issues where he has acted as an agent of the principal.

7. This Court finds that in addition, order XVIII Rule 3 A has been held to be directory. Permission to examine the principal witness after another witness has been examined can also be taken later. It is not

mandatory . Therefore on these two grounds this Court finds that there are no merits in the Revision. Accordingly the Revision is dismissed.

Miscellaneous petitions pending, if any, shall stand closed

JUSTICE D.V.S.S.SOMAYAJULU

Date: 27.11.2018.

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THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU



Dated: 27.11.2018.

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