

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.6642 OF 2018

O R D E R

The petitioner is the defendant in O.S.No.181 of 2015 on the file of the learned Additional Junior Civil Judge, Kukatpally, Ranga Reddy District. He filed I.A.No.598 of 2018 therein under Order 3 Rules 1 and 2 CPC to eschew the evidence of P.R.Mohan, the GPA holder, who was to be examined as P.W.1. By order dated 04.10.2018, the trial Court dismissed the I.A. Aggrieved thereby, he is before this Court.

Heard Sri K.V.Janardhan Rao, learned counsel for the petitioner-defendant, and Sri V.V.Subrahmanyam, learned counsel representing Sri E.Narsimha Swamy, learned counsel for the respondent-plaintiff.

The plaintiff in the suit executed General Power of Attorney (GPA) dated 4th April, 2015 authorising his father, P.R.Mohan to represent him in any Court in India and to appear personally in his place before any such Court. On the strength of this GPA, P.R.Mohan filed his affidavit in lieu of chief-examination on 22.12.2017 deposing as P.W.1. It is this affidavit which was targeted by the defendant by filing the subject I.A.

By the order under revision, the trial Court noted that in terms of Rule 32 of the Civil Rules of Practice framed by this Court, a GPA holder could step into the shoes of the party whom he was representing except to the extent of personal knowledge of his principal and give evidence on his behalf. It is on this basis that the trial Court dismissed the I.A.

However, as rightly pointed out by Sri K.V.Janardhan Rao, learned counsel, it is not open to a GPA holder to depose to and give evidence of facts which were prior to the execution of the GPA. Reference in this

regard may be made to the observations of the Supreme Court in MAN KAUR (DEAD) BY LRS. V/ s. HARTAR SINGH SANGHA:

'12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge.

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who

has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.'

Reference may also be made to the earlier judgment of the Supreme Court in JANKI VASHDEO BHOJWANI V/ s. INDUSIND BANK LTD.¹, wherein it was observed as follows:

'Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.'

Though Sri E.Narsimha Swamy, learned counsel, placed reliance on M/ S. RDS PROJECT LTD. V/ s. MARIYU ABDUL AZEEZ², SHARADAMMA V/ s. KENCHAMMA³ and SECRETARY TO GOVT. OF INDIA, MINISTRY OF DEFENCE, NEW DELHI V/ s. INDIRA DEVI⁴, this Court finds that none of these judgments turned on the scope and ambit of the deposition and evidence that can be given by a GPA holder on behalf of his principal.

¹ (2005) 2 SCC 217

² AIR 2009 MADRAS 101

³ AIR 2007 KARNATAKA 17

⁴ AIR 2003 ANDHRA PRADESH 329 (DB)

In any event, in the light of the settled legal position as set out by the Supreme Court in the aforesaid judgments, it would not be open to a GPA holder to step into the shoes of his principal to the extent of narrating facts which would ordinarily be only within the knowledge of the principal and were prior to the date of execution of the GPA.

Sri V.V.Subrahmanyam, learned counsel, would however submit that as the GPA holder in the case on hand is none other than the father of the principal, the plaintiff in the suit, he would know the facts fully. Even if so, this Court is of the opinion that their relationship by itself would make no difference to the settled legal position with regard to the scope of the evidence that can be given by a GPA holder. It may be noted that it is not the case of the learned counsel that the father looked after the affairs of the plaintiff from the beginning. It was only in April, 2015, that the GPA came to be executed. Therefore, if the father of the plaintiff wishes to give evidence as to facts which are within his knowledge in the capacity of being the father of the plaintiff, it is for him to get himself examined independently but not in the capacity of being the GPA holder of the plaintiff.

Perusal of the affidavit filed in lieu of the chief-examination by P.R.Mohan, the GPA holder, clearly demonstrates that he spoke of facts dating back to the year 2005-06, long prior to the execution of the GPA in his favour on 4th April, 2015. Such facts could not have been brought out by him in the capacity of a GPA holder.

The civil revision petition is accordingly allowed setting aside the order dated 04.10.2018 passed by the trial Court in I.A.No.598 of 2018 in O.S.No.181 of 2015 and eschewing the chief-examination affidavit filed by P.R.Mohan, the GPA holder of the plaintiff, in December, 2017. It shall

however be open to the said GPA holder to file a fresh affidavit in lieu of chief-examination, keeping in mind the settled legal position set out *supra*. Upon filing of such a chief-examination affidavit, the trial Court shall proceed in the matter.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR, J

19th NOVEMBER, 2018

Sv

