

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

CR-2561-2018 (O&M)
Date of decision: 10.10.2018

Daya Nand

... Petitioner

versus

Shashi Bala & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sandeep Kumar Yadav, Advocate
for the petitioner.

Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Munish Mehta, Advocate
for respondents No.1 and 2.

Amol Rattan Singh, J.(Oral)

By this petition, the petitioner challenges the order of the learned trial Court (Civil Judge (J.D.-cum-JMIC, Mahendergarh), dated 02.04.2018, by which the plaint signed by plaintiff no.2 along with the *vakalatnama* (power of attorney) executed by her, in favour of her counsel were taken on record.

Learned counsel for the petitioner submits that the petitioner had raised an objection at the time of arguments in the trial, that the suit on behalf of plaintiff no.2 was not maintainable as the plaint was not signed by the said plaintiff and further, that the power of attorney executed by her in favour of plaintiff no.1 for pursuing the suit, was not actually qua the suit property but some other property. Hence, he submits that at the final stage of the trial, a fresh plaint signed by plaintiff no.2 along with a power of attorney executed by her in favour of her counsel could not have been taken

on record.

On specific query, it is not denied that the aforesaid objections were not taken by the petitioner, i.e. defendant, at any stage in the pleadings prior to the argument actually having been raised at the final stage of the trial.

In my opinion, that being so and plaintiff no.2 submitting the plaint signed by her, executing a power of attorney in favour of her counsel, thereby substituting the general power of attorney executed by her in favour of plaintiff no.1, (pertaining to some other property), was not a deniable action by the trial Court, especially as it is not denied that no **amended plaint** was actually filed by plaintiff no.2, though in the impugned order the second last sentence reads to say as follows:

“Now to come upon 05.04.2018 for amended plaint, Power of Attorney, final arguments.”

Learned counsel for the respondents, apart from submitting that there was no amended plaint actually submitted, has relied upon a judgment of the Supreme Court in ***Uday Shankar Triyar vs. Ram Kalewar Prasad Singh & anr., 2006(1) RCR (Civil) 18***, to submit that though a pleader appearing only upon on a *vakalatnama* signed in his favour is mandatory, however, appearance without that would be a procedural defect only; and, in any case, a *vakalatnama* having duly been filed by counsel for the 2nd plaintiff.

Learned counsel for the petitioner has further submitted that as a matter of fact plaintiff no.2 should have been summoned personally by the trial Court to verify her signatures on the plaint and even on the *vakalatnama* signed by her in favour of her counsel.

That contention is rejected because the plaint was accompanied by the *vakalatnama* presented by a counsel duly appearing for her. If that contention is to be accepted, without any evidence led to prove that the signature was not that of plaintiff no.2, it would mean that in every single case the *vakalatnama* of any counsel is to be disbelieved, with the litigant actually summoned to Court to identify his/her signatures thereon.

As regards the contention earlier raised by learned counsel, that the plaint and *vakalatnama* should not have been accepted by the trial Court at that stage, he relies upon a judgment of a Coordinate Bench of this Court in ***Ganesh Parshad Aggarwal vs. Sushila and others, 2010 (9) RCR (Civil) 358***, from which he points to paragraph 6, which read as follows:

“Applying the ratio of the above dictums, I am of the opinion that even if plaint filed for the Unit No. S-668 and S-671 seems to be not proper, in view of the non-mentioning of these units in the power of attorney, however, learned Trial Court instead of rejecting the plaint should have called the plaintiff either to sign and verify the pleading or to execute another power of attorney in favour of the power of attorney holder to justify the filing, signing and verification of the pleading.”

I do not see how the ratio of that judgment is in his favour, as in my opinion actually it goes against the petitioner's case, because what has been specifically held by this Court is that instead of rejecting the plaint the trial Court should have called the plaintiff, either to sign and verify the pleading **or** to execute another power of attorney in favour of the power of attorney-holder, to justify the filing, signing and verification of the pleadings.

Though undoubtedly the first part of the aforesaid observation

is to the effect that the trial court should have **called the plaintiff**, however, it is clarified by the second part of the sentence, which says “**or** to execute another power of attorney in favour of power of attorney-holder to justify the filing, signing and verification of the pleadings”. Though in the present case, a second power of attorney in favour of plaintiff no.1 was not submitted by plaintiff no.2, however, instead a *vakalatnama* was executed by her to enable her counsel to appear for her independently, instead of plaintiff no.1 representing her as her attorney.

Consequently, finding no merit in this petition, it is dismissed.

10.10.2018
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No