

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2019

CORAM:

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.R.P.(PD) No.817 of 2019

and

C.M.P.No. 5346 of 2019

Ambika

... Petitioner

Vs.

Arunachalam @ Arun

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and decretal Order dated 08.02.2018 made in I.A.No.3514 of 2017 in O.P.No.3014 of 2015 on the file of the V Additional Family Court at Chennai.

For Petitioner : Mr.V.Ramamurthy

For Respondent : Mr.A.R.L.Sundaresan
Senior Counsel for
Mr.G.R.M.Palaniappan

ORDER

The petitioner is the wife. The respondent-husband through his Power of Attorney Agent, filed a petition for divorce. According to the petitioner, no specific power was given to institute the divorce petition and therefore, the divorce petition filed by the agent should be dismissed.

2. The short facts are as follows:-

The petitioner and the respondent got married on 24.10.2007. Thereafter, the respondent left for New Zealand in the year 2009 and in between the petitioner gave birth to a female child. Since the child was one year and three months, the petitioner refused to go to New Zealand along with the respondent. Thereafter, in the year 2013, the respondent's father as Power of Attorney filed a petition for divorce before the Family Court, Madurai on behalf of the respondent. The petitioner filed an application to reject the petition filed by the father of the respondent in the capacity of the Power of Attorney, as there is no specific power conferred on him to institute the suit. The Family Court, Madurai, after considering the objections, has dismissed the petition against which the present revision petition has been filed.

3. The learned counsel for the petitioner would contend that at the outset, the General Power of Attorney will be given to institute the suits and defend the cases before the Civil, Revenue and Criminal Courts and before other Government parties, it is not specifically given for the purpose of instituting a matrimonial matter, which is personal between the husband and wife. Further, the Power of Attorney was given on 19.06.2009. At that juncture, the husband and wife were living cordially and there is no misunderstanding between

the parties. As such, there is no cause of action for the respondent to give a Power of Attorney for instituting the matrimonial matter. The Power of Attorney is not entitled to file the divorce petition. Without any authority or consent or approval from the Principal, the Power of Attorney has filed the above divorce petition. Hence, the petition filed by the Power of Attorney is to be rejected.

4. The Learned Senior Counsel appearing for the respondent would contend that the Power of Attorney specifically states that it was given to appear and act in all Courts and to sign and verify petitions and to appoint vakeels and also to sign vakalat. Therefore, the Power of Attorney is given for all purposes and it is not necessary to specifically mention, that the Power of Attorney is given to institute the matrimonial dispute also. Further, he would contend that in anticipation of all legal proceedings, the Power of Attorney was given. Therefore, it cannot be said it shall be given for specific purpose and the nature of the litigation need to be specific in a general Power of Attorney. Therefore, the Power of Attorney given by the respondent is valid for all purposes and that the Power of Attorney agent will be empowered to file the divorce petition also before the Family Court.

5. Secondly, it was argued that the Principal appeared before the Court and deposed that the divorce petition was filed by the Power of Attorney on instruction given by him and that it was not filed by the agent, without his knowledge. Thirdly, the Power of Attorney filed an application in I.A.No.380 of 2013 and got recognized by the Court as Power of Attorney of the respondent by order dated 31.07.2013. Until and unless, that order is set aside, the petitioner is not entitled to get the petition filed by the Power of Attorney to be rejected. On these grounds, the learned Senior Counsel would contend that the petition deserves to be dismissed.

6. I considered the rival submissions.

7. Admittedly in **Order 3 Rule 2 of C.P.C.**, it clearly states as follows:-

2. Recognized agent— *The recognized agent of parties by whom such appearances, applications and acts may be made or done are—*

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the

appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

8. In the instant case, the General Power of Attorney is given to act on behalf of the Principal/respondent before all Courts and to sign petitions and vakalats on behalf of the respondent, which clearly goes to show that the petitioner being represented by the Power of Agent is legal. Further, this Court, in a case reported in **"2014-3-L.W.531"** it is clearly held in paragraphs as follows:-

21. (i). *Power of Attorney can appear, plead and act on behalf of the party, but he cannot become a witness on behalf of the party. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appeal as a witness on behalf of the principal in the capacity of the principal.*

iii) *In the family matters, it is not possible for the spouse to engage a power and act on his/her behalf to give evidence before the family Court which she/he alone has personal knowledge.*

iv) *There is no legal impediment under the Family Courts Act, for a Power of Attorney to appear on behalf of the Principal and the only legal embargo is that the recognized agent should not be a legal practitioner. Any*

person, not being a legal practitioner, can be nominated as an agent under Order 3 Rule 2 CPC, to prosecute or defend the parties and until the Family Court passes any specific order, directing appearance of the party, depending upon the facts and circumstances of the case. The persons who are exempted from the term 'legal practitioner' are the parents, brothers and sisters. Even then for deposing the facts that are within the personal knowledge of the principal, they should refrain themselves, but the principal should appear before the Court and depose.

22. *In view of the above discussion and observation made by us, we are of the view that the appellant/wife shall be at liberty to prosecute the proceedings filed under Section 13(i-a)(i-b) of the Hindu Marriage Act through Power of Attorney and the Family Court at the same time is empowered to insist upon the person appearance of the parties as and when required.*

9. The Trial Court also in consideration of the order passed by the Family Court, Madurai, it is seen that the order passed in I.A.No.380 of 2013 dated 06.12.2013 is as under:-

As a power agent, he could present the application on behalf of his Son. But he is not entitled to give evidence about the facts which are personally known to his Son. Therefore, his power is restricted to present the application. But he is not permitted to give evidence

on behalf of his son. Accordingly, this petition is allowed.

10. The above order clearly states that the Power of Attorney agent can only represent the petitioner and he cannot depose on behalf of the petitioner. At the time of giving evidence, the petitioner's husband shall appear.

11. Therefore, as held by the Division Bench of this Court, the present petitioner has not questioned the order recognizing the Power of Attorney by the Court. On the other hand, the petitioner has challenged the order passed on a petition filed to reject the divorce petition.

12. The cross examination made by the petitioner, though, made on a later date it is relevant to this case. The Principal recognized the Power of Attorney given by him in favour of his father and also clearly deposes that on his instruction and with his consent only, the divorce petition was filed by his agent. Therefore, now it cannot be stated that the husband do not have any knowledge of the divorce petition filed before the Court and that the petitioner's father, as an agent has filed the petition without knowledge of the petitioner.

M. GOVINDARAJ, J.

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13. Therefore, I do not find any merits in the contentions of the petitioner. The Power of Attorney giving all powers to the agent, to appear before all Courts and to defend all the petitions and sign all the petitions, does not require a specific power to file the divorce petition.

14. In view of the above discussions, this Civil Revision Petition is dismissed accordingly. No costs. Consequently the connected civil miscellaneous petition is closed.

07.08.2019

Speaking Order/Non Speaking Order
Index : Yes/No

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To

V Additional Family Court,
Chennai.

C.R.P.(PD) No.817 of 2019