

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.774 of 2020 and
C.M.P.No.4112 of 2020

Y.J.Shabbir

.. Petitioner

Vs.

Sree Thiruvoteeswarar Free High School Trust,
Rep. by its Trustee Mr.T.R.K.Saravanan,
No.1, E.V.K.Sampath Salai,
Vepery, Chennai-600 007.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 17.12.2019 passed by the learned III Assistant City Civil Judge at Chennai in I.A.No.2 of 2019 in O.S.No.3746 of 2015 and allow this Civil Revision Petition.

For Petitioner : Mr.M.Aravind Subramanyam

For Respondent : Ms.G.Sugumaran

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 17.12.2019 passed by the learned III Assistant City Civil Judge at Chennai in I.A.No.2 of 2019 in O.S.No.3746 of 2015.

2.Originally, the Interlocutory Application was filed by the petitioner/defendant under Order III Rule 1 r/w 151 of C.P.C., to permit the petitioner's elder brother to represent on behalf of the petitioner as power of attorney agent and to give evidence on behalf of him.

3.The case of the petitioner is that the suit was filed by the respondent/plaintiff for fixing fair rent for the suit property, in which, the petitioner is a tenant. The petitioner herein has filed an Interlocutory Application in I.A.No.9104 of 2018, seeking permission of the Court to appoint his brother as a special power agent by assigning all power pertaining to the

suit, including to give evidence. The petitioner has executed a general power of attorney on Non Judicial Papers valued around Rs.20/- and thereafter, he came to know that the document should be prepared in stamp papers valued at Rs.100/-. Therefore, the petitioner withdrew the Interlocutory Application with liberty to file a fresh application. Thereafter, the petitioner filed I.A.No.13888 of 2018 for the similar relief, in which objection was raised stating that the power agent has not affixed his signature in the deed and the said application was also withdrawn with liberty. Then, the petitioner has filed I.A.No.1 of 2019 with mistakes and the same was sworn by the petitioner's brother instead of the petitioner. Therefore, the petitioner has withdrawn the petition and then, he filed I.A.No.2 of 2019 in O.S.No.3746 of 2015. The learned III Assistant City Civil Judge at Chennai, by order, dated 17.12.2019, dismissed the application, against which, the present civil revision.

4.The respondent/plaintiff has filed counter in I.A.No.2 of 2019, denying the allegations made by the petitioner and submitted that there is no reason given either in the affidavit or in the deed for giving power to the agent. Further, the respondent objected that the application filed at the part heard stage cannot be entertained.

5.The petitioner is the defendant in the suit filed by the respondent Trustee for recovery of arrears of rent of Rs.60,000/- per month. In the said suit, the petitioner filed his written statement and cross examined the respondent/plaintiff's witnesses. The petitioner has filed I.A.No.216 of 2018 to recall the defendant's side witnesses; I.A.No.217 of 2018 to reopen the defendant's side evidence; I.A.No.218 of 2018 to recall PW2 for the purpose of cross examination and I.A.No.219 of 2018 to reopen PW2's evidence. After all these applications were allowed, on his instruction, the witnesses were cross examined by his counsel. Therefore, until 20.06.2018 when PW2 was cross examined, it is the petitioner who had given instruction to conduct the case and to defend the suit. The petitioner is in occupation of the respondent's property and he has been paying rent and after enhancing the rent by the trustees, he is not paying the enhanced rent. These facts which are within the personal knowledge of the petitioner and it is only he who can depose about these facts and the said power of attorney agent will not be in a position to appear before the Court to give evidence for any valid reason. The Court below observed that though reason has been assigned by the petitioner for not deposing on his behalf, no reason has been given by the petitioner why the power of attorney agent to depose on behalf of him in the suit proceedings. The Court below also observed that there is no

reason given by the petitioner to show why he is withdrawing himself from giving evidence. This document has been prepared particularly on a blank papers containing signatures of more than one person and the agent was authorized to represent the petitioner in any Court where the suit is to be transferred. This shows that the petitioner has prepared himself not to conduct the case and if insisted, he has also prepared to move transfer application and that is why this class has been inserted by the power of attorney deed, filed along with this application. Even if this application is allowed, the evidence of the agent cannot be wholly relied upon to decide the merits of the case and the application and the deed of power of attorney does not contain any reason for appointment of agent and dismissed the Application.

6.The learned counsel for the petitioner would submit that in I.A.No.9104 of 2018, the petitioner sought permission of the Court to appoint his brother as special power agent by assigning all powers pertaining to the suit property including to give evidence. The learned counsel would further submit that the petitioner had executed a general power of attorney on Non Judicial Stamp papers valued at Rs.20/- and later, as per the requirement valued at Rs.100/-, a fresh Interlocutory Application was filed in I.A.No.13888 of 2018 for the same relief. On the objection of the respondent/plaintiff that the power agent has not affixed his signature in the deed, the petitioner withdrew the application with liberty. Then, the petitioner has filed I.A.No.1 of 2019 with mistakes and the same was sworn by the petitioner's brother instead of the petitioner. Therefore, the petitioner has withdrawn the petition and then, he filed I.A.No.2 of 2019 in O.S.No.3746 of 2015. The Court below had erroneously dismissed the said application on the ground that the power of attorney was not specifically stated the reasons for why appointment has to be made.

7.The learned counsel for the petitioner would further submit that the petitioner would travel for business purpose extensively and he has busy schedule of business. He would further submit that Order III of C.P.C does not envisage any reason to be stated for appointing a power of attorney and the Court below without considering the said provision, mechanically passed the order. The power agent Y.J.Abbas is none other than the brother of the petitioner. Both the petitioner and Y.J.Shabbir are doing business together in the same premises. Hence, all details regarding the rental premises and suit proceedings are well informed and the power agent are well aware of the said facts. The learned counsel would further submit that the power agent has no personal knowledge about the case and rental premises is only a presumption made by the Court

below. When the suit is for fixing the fair rent for the building, there need not be any personal knowledge and the power agent could have deposed on the condition of the building. The Court below had come to the conclusion that the petitioner has not capable of adducing evidence. The petitioner is running business in Chennai, but at the same time he is having business in other services and he will have to travel extensively. Further, the person who has been appointed as a power agent is also a partner in the business and he is well aware and conversant with the facts of the case and has personal knowledge about the transactions covered under the suit. Hence, the order of the Court below is liable to be set aside.

8.This Court perused the materials available on record and heard the learned counsel for the petitioner.

9.The suit in O.S.No.3746 of 2015 was filed by the respondent/plaintiff to pass a judgment and decree, directing the petitioner/defendant to pay a sum of Rs.60,000/- for being enhancement of rent per month from the date of plaint. The petitioner/defendant was a tenant and the respondent/plaintiff is a trust viz., Sree Thiruvoteeswarar Free High School Trust, represented by its Trustees T.R.K.Saravanan, endowed by T.P.Ramasamy Pillai for the benefit of poor peoples. The income of the trust is being used for the maintenance and management of the school. The respondent/plaintiff is the land lord of the premises bearing No.145, Prakasam Salai, Broadway, Chennai. The petitioner/defendant is a tenant under the plaintiff in respect of ground floor of an extent 3536 sq.ft and Mezzanine First Floor (Duplex) inside the side of extent 1300 sq.ft in the premises bearing Door No.145, Prakasam Salai, Broadway, Chennai for commercial purpose on monthly rent of Rs.7,500/-. As the said property has become the commercial locality of the city, the respondent/plaintiff is seeking higher rent. As the petitioner is running a company in the name of A.Y.J.Engineering, the respondent has enhanced the rent from 2011 onwards and the same was communicated to the petitioner. Despite sending several communications, the enhancement rent was not paid by the petitioner/defendant. Hence, the respondent/plaintiff having no other option, has filed the suit for fixing the fair rent Rs.60,000/- per month. Inspite of sending legal notice from 2011 to 2014, the petitioner did not pay the rent. In the suit, the written statements was filed by the petitioner/defendant on 27.06.2016, denying all the averments and stating that the premises lacks basic infrastructural needs and common minimum amenities and that the building was in a dilapidated condition and he has restored the same with huge efforts and the enhancement of rent is unfair by any means.

10.The petitioner has filed the Interlocutory Application in I.A.No.2 of 2019 in O.S.No.3746 of 2015, seeking to appoint his brother to give evidence on behalf of him. The said application was dismissed by the Court below on the ground that the facts to be deposed as evidence on the side of the petitioner should be within the personal knowledge of the power agent and there is no averment in the agreement that the agent is fully conversant with the facts of the case.

11.The Court below ought not to have denied the opportunity as prayed by the petitioner with a preconceived mind. It is merely an Application to permit the power agent to depose on behalf of the petitioner. Order III Rule 1 and 2 of C.P.C., provides such power agent to appear on behalf of the parties and make such application for deposing. For better appreciation, Order III Rule 1 and 2 of C.P.C., is extracted hereunder:-

"1.Appearances, etc., may be in person, by recognized agent or by pleader - Any appearance, application or act in or to any Court, required or authorized 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 recognized agent, or by a pleader [appearing, applying or acting, as the case may be,] on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2.Recognized agents. - The recognized agents 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."

12.On plain reading of the above said provision, the Court does not prescribe that the agent should be with full personal knowledge and fully conversant with the case. It is a general principle that if the agent is deposed on behalf of the

petitioner, the petitioner cannot later plead ignorance for the wrong deposition made by the agent. As the agent is acting only on behalf of the petitioner, it should be treated as it was deposed by the petitioner. Thus, the agent is fully conversant with the case and has personal knowledge about the transactions covered under the suit. It should be seen that whether the said person, who is appearing on behalf of the party is qualified to give evidence with sole mind.

13. Thus, the criteria adopted by the Court below for rejecting the Application is unwarranted. The Court below ought not to have considered the application which has been filed with so many mistakes and the agent cannot depose on behalf of the party. Thus, on a preconceived mind, the Court below has rejected the Application of the petitioner and held that even if the Application is allowed, the evidence of the agent cannot be wholly relied upon to decide the case on merits. The observation made by the Court below is unwarranted and this Court is not able to understand under what context the court below has expressed such terms. Even before the Application is allowed, the evidence of the agent is taken up and such unwarrant application could be avoided.

14. In view of the above, this Court is of the view that since the power agent being the brother of the petitioner/defendant and also a partner in the business, he can appear before the Court below to give evidence on behalf of the petitioner. The suit is of the year 2015 and the Interlocutory Application has been filed in the year 2019 and the matter has been delayed for more than 3 years, which would cause detrimental to the rights of the plaintiff, who is seeking for enhancement of the rent. Hence, the order, dated 17.12.2019 in I.A.No.2 of 2019 in O.S.No.3746 of 2015 is liable to be set aside.

15. Accordingly, this Civil Revision is allowed and the order, dated 17.12.2019 in I.A.No.2 of 2019 in O.S.No.3746 of 2015 is set aside. The power of attorney holder has to file an appropriate power of attorney before the Court below, within a period of two weeks from the date of receipt of a copy of this order. The Court below can proceed further in the suit and decide the same, within a period of three months thereon. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

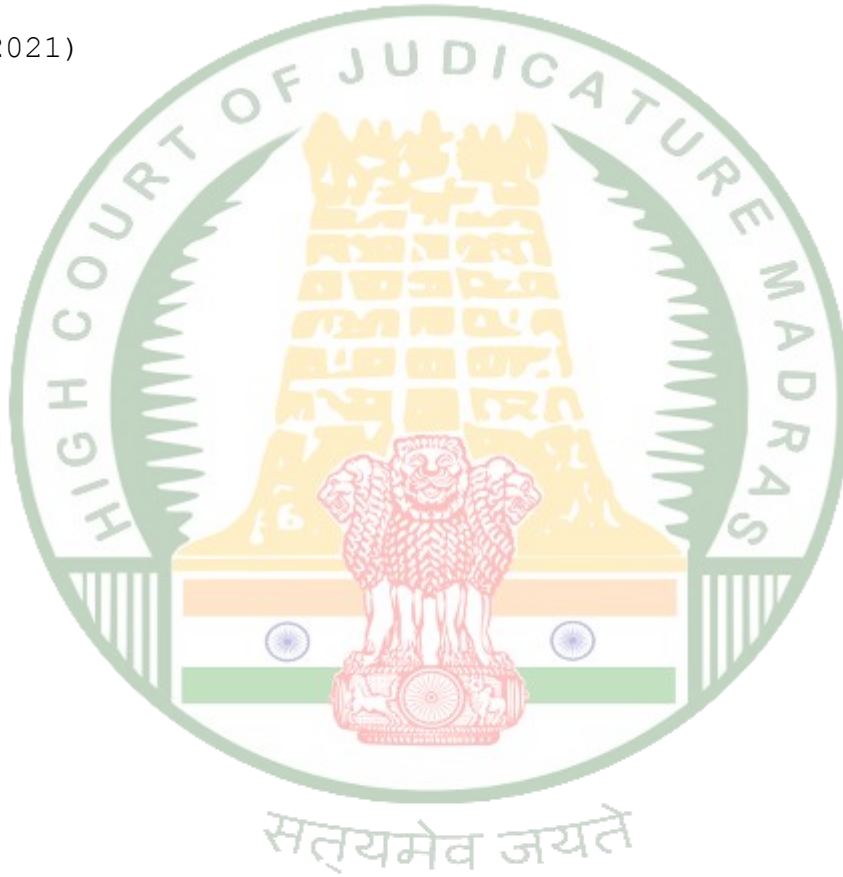
The III Assistant City Civil Court,
Chennai.

+1cc to Mr.M.Aravind Subramanian, Advocate SR.15983

+1cc to Mr.G.Sugumaran, Advocate SR.16228

C.R.P.No.774 of 2020

LN (CO)
CB (23/03/2021)



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