

08. 23.03.2023
bd. Ct.15

W.P.A. 28194 of 2017
IA No.CAN 1 of 2018 (Old No. CAN 624/2018)

Zenat Bibi & Ors.

-vs-

Kolkata Municipal Corporation & Ors.

Mr. Partha Sarathi Das

Md. Hafiz Ali

Ms. Shanta Sarkar

... for the petitioners.

Mr. Ashoke Banerjee

Mr. Barin Banerjee

Ms.Sima Adhikari

... for the KMC.

Mr. Saurav Chaudhuri

... for the Applicant

Mr. Satyajit Talukdar

... for the KMDA

The writ petition appears to have been filed by four persons namely Zenat Bibi, Abdul Sayeed, Abdul Kalam and Abdul Rashid and connected affidavit was affirmed by one Haider Khan claiming authority to affirm on behalf of aforesaid four persons based on power of attorney executed on 25th January, 2011. Subsequently, while considering the writ petition this Court found that on the day affidavit was affirmed by said Haidar Khan i.e, on 17th November, 2017 in connection with the writ petition, said Haidar Khan was not authorised to affirm affidavit on behalf of the aforesaid four writ petitioners in view of subsequent revocation of power of attorney by those four writ petitioners on 30th September, 2014. In this regard

one application was filed by one of the writ petitioners namely Abdul Kalam contending that registered power of attorney was revoked on 30th September, 2014 thereby prayer was made to restrain said Haidar Khan to proceed with the writ petition.

Taking cognizance of such application affirmed by Abdul Kalam a coordinate Bench passed order directing the authorities of Questioned Documents Examination Bureau to verify the signatures of Abdul Kalam present in the said application being CAN 624 of 2018 and the signature of Abdul Sayeed, one of the writ petitioners, which is present in affidavit in opposition affirmed on 1st February, 2018 to the application affirmed by Abdul Kalam. Subsequently vide report dated 11th October, 2018 prepared by the Examiner of Questioned Documents Examination Bureau, CID, West Bengal, the signatures of Abdul Kalam and Abdul Sayeed were verified.

Taking into note of this report filed by the Questioned Documents Examination Bureau this Court proceeded to hear out the parties to this writ petition and was contemplating to pass consequential order against Haidar Khan who affirmed the affidavit in connection with the writ petition on 17th November, 2017 on the strength of power of attorney dated 25th January, 2011 which was found to be revoked on 30th September, 2014.

Apparently it appears that said Haidar Khan desperately affirmed the affidavit in connection with the writ petition though he was not

having authority due to revocation of power of attorney on 30th September, 2014.

However, during course of hearing Mr. Das, learned advocate, representing the petitioner has drawn attention of this Court to section 208 of the Contract Act, 1872 and submitted that said Haidar Khan is entitled to get the benefit of such provisions under the Contract Act, since act of revocation of power of attorney was not formally intimated to Haidar Khan by any one of those four writ petitioners. In support of such contention reliance has been placed on the judgment of the Apex Court reported in **(2022) 11 (SCC) 460 (Amar Nath -vs- Gian Chand & Anr.)**. It has been argued on behalf of Haidar Khan that in absence of formal intimation to the agent after revocation of power of attorney on the strength of section 208 of Contract Act, 1872 the agent is immuned and the steps taken by the agent needs to be construed, taken in good faith.

Mr. Banerjee, learned senior advocate representing KMC submits that considering the relevant provisions of the Contract Act, 1872 Court may decide the issue of passing order against Haidar Khan but the writ petition in view of affirmation of affidavit by said Haidar Khan after revocation of power of attorney on 30th September, 2014 cannot survive.

It has also been submitted that learned advocate of those four writ petitioners vide letter dated 7th September, 2016 intimated the Assessor Collector South of KMC, relating to revocation of power of attorney by the petitioners.

Having considered the submissions made on behalf of respective parties this Court is tasked to decipher the conduct of Haidar Khan in affirming the affidavit in connection with the writ petition on 17th November, 2017. It is true as it emanates from the pleadings available on record that the power of attorney which was executed on 25th January, 2011 was revoked by deed of revocation of power of attorney executed by the four writ petitioners on 30th September, 2014. Therefore it is clear that on the date when the affidavit was affirmed in connection with the writ petition on 17th November, 2017 said Haidar Khan was not authorised to affirm the affidavit.

Question comes up for consideration whether said Haidar Khan can derive benefit of section 208 of Contract Act, 1872 or not. Test is whether during the interregnum period on revocation of power of attorney and affirmation of affidavit in connection with the writ petition the act of revocation of power of attorney by those four persons was formally intimated to said Haidar Khan or not. In order to ascertain this fact of intimation this Court granted opportunity to the four writ petitioners to affirm an affidavit and disclose whether act of revocation of power of attorney was at all intimated to Haidar Khan at the material point of time. Subsequently an affidavit has been filed today which has been affirmed by Abdul Kalam, one of the writ petitioners, wherefrom it appears albeit the power of attorney which was executed on 25th January, 2011 stood revoked by executing deed of revocation

on 30th September, 2014 but there is nothing on record which goes to show that there was formal intimation of revocation of power of attorney by the petitioners to said Haidar Khan before he affirmed the affidavit in connection with the writ petition on 17th November, 2017.

In view of such factual aspect this Court requires to consider section 208 of the Contract Act, 1872 and the judgment of the Apex Court in the case of **Amar Nath** (supra).

For better understanding of the issue in question this Court finds it apt to quote section 208 of the Contract Act, 1872 below:

*“Section 208. **When termination of agent’s authority takes effect as to agent, and as to third persons—** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.”*

Since it has been provided in section 208 that termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him and in the present case nothing has been shown from which it can be inferred that there was formal communication of revocation of power of attorney by the petitioners or any one of the petitioners this Court finds that said Haidar Khan is required to get the benefit of such provision under section 208. It has also been unequivocally decided in paragraphs 75 and 76 of **Amar Nath** (supra) that agent is required to be put

on notice on revocation of authority as per section 208. Paragraphs 75 and 76 of **Amar Nath** (supra) runs infra:

75. Section 208 of the Contract Act, 1872, which deals with the time when termination of the agent's agency takes effect, reads as follows:

“208 When termination of agent's authority takes effect as to agent, and as to third persons.— *The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.”*

76. *We may notice the following view from Pollock and Mulla, The Indian Contract and Specific Relief Acts, 14th Edn.*

“Termination not to affect third parties without notice.

Termination becomes effective only when it comes to the knowledge of the affected party. Even if the agent is aware of the revocation, it does not affect third parties who in good faith enter into contract with the agent and in ignorance of the revocation; they are protected; such provision is in interest of commerce: Where the principal has terminated the agency, or the agency has been terminated by happening of events, the principal continues to be bound by the agent's act under the doctrine of apparent authority, until the third parties have notice of the termination.

Time from which termination operates

‘Revocation by the act of the principal takes effect as to the agent from the time when the revocation is made known to him, and as to third persons when it is made

know to them, and not before.”

In view of aforesaid factual situation coupled with the prescription of law in terms of section 208 read with the judgement of the Apex Court delivered in the case of Amar Nath (supra) this Court is restraining itself from passing order against Haidar Khan. However in view of cancellation of power of attorney before the affirmation of affidavit in connection with the writ petition it is apparent that on 17th November, 2017 Haidar Khan was not authorised to affirm the affidavit while instituting the writ petition.

Accordingly, the writ petition stands dismissed. Application being CAN 1 of 2018 (Old CAN No. 624 of 2018) stands disposed of. However, there shall be no order as to costs.

Report filed on behalf of Questioned Document Examination Bureau along with other documents are kept in the sealed cover on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)