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CRP (MD) No.2331 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.12.2022
PRONOUNCED ON : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP (MD) No.2331 of 2022
and
CMP (MD) No.11236 of 2022

Hotel Ornate (Nilgiry) Private Limited,
No.310, Veerasarkar Marg,
Dadar, Mumbai,
Represented by its Power Agent,
S.Srinivasan

... Petitioner

Vs

Lakshmipriya Nagendran

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this civil revision petition by setting aside the fair and decreetal order passed in IA.No.235 of 2014 in OS.No.56 of 2014 on the file of the District Munsif cum Judicial Magistrate No.1, Kodaikanal dated 26.04.2022.

For petitioner : Mr.H.Arumugam
For Respondent : Mr.M.Kannan



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ORDER

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The Revision Petitioner before this Court is the 1st defendant in the OS.No.56 of 2014 on the file of the District Munsif Cum Judicial Magistrate Court No.1, Kodaikanal. The petitioner / 1st defendant filed the an application in IA.No.235 of 2014 under Order 3 Rule 2 of the Code of Civil Procedure, to permit the petitioner to proceed with the case on behalf of the 1st defendant as a power agent. The trial court by its fair and decretal order dated 26.04.2022 dismissed the application in IA.No.235 of 2014. Aggrieved over the same, the 1st defendant in the suit has filed the present revision.

2.The case of the plaintiff is that they are the descendants of Sivagangai Samasthanam and the suit property is the plaintiff's ancestral hindu joint family property. The plaintiff claims that there was a partition in the year 1975 among the family members and the suit property at Kodaikanal was allotted to one Raja Kumari Rajalakshmi. The said Raja Kumari Rajalakshmi has executed a sale deed in favour of the 1st defendant on 27.03.1986 as Document No.



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404/1986. The property was sold exclusively by Raja Kumari Rajalakshmi without any consent of other legal heirs, who also have shares. Therefore, the respondent / plaintiff has filed a suit in OS.No.58 of 2010 to declare the sale deed in Document No.404/1986 as null and void and this suit in OS.No.56 of 2014 for the relief of permanent injunction by restraining the petitioner and other defendants from disturbing their possession and enjoyment by way of subdivision.

3.The Board of Directors of the 1st defendant company passed a resolution dated 24.06.1984 permitting its Managing Director, one Jamal K.Shah to sign the agreement of sale for the sale of their properties at Ooty and Kodaikanal, with their bankers, viz., Bank of Tokyo and State Bank of Trivancore. Accordingly, the petitioner company has entered into a sale agreement to sell the property to another company namely Trans India Resorts Ltd for a sum of Rs.2.70 crores. They also deposited the original title deeds including the original power of attorney with bank by creating an equitable mortgage. The Trans India Resorts Ltd obtained a loan from the State



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Bank of Travancore for purchasing this property and also transferred the sale amount to the petitioner company. The Managing Director of the petitioner company also executed a registered irrevocable power of attorney as Document No. 1111/1995 before the Joint District Registrar, Mumbai authorising one Srinivasan as the power of attorney to execute sale agreements and sale deeds on behalf of the Managing Director.

4.The 1st defendant has filed IA.No.235 of 2014 in OS.No.56 of 2014 before the District Munsif Cum Judicial Magistrate Court No.1, Kodaikanal under Order III Rule 2 CPC, seeking permission to proceed with the case through the said Srinivasan, who is the power agent of the Managing Director of the 1st defendant company. This IA.No.235 of 2014 was dismissed by fair and decretal order dated 26.04.2022 and against the same, the present revision is filed.

5.The learned counsel for petitioner by relying on Rules 16 and 17 of the Civil Rules of Practice, submits that Rule 16 is not applicable to this case and it is



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related to agents appearing through counsel and as per Rule 17, if any proceeding is required to be signed or verified by a party and signed by any other on his behalf, a written authority in this behalf signed by the party shall be filed, ie., the Power of Attorney together with an affidavit verifying the signature of the party.

6.The learned Counsel further submits that the "together with an affidavit verifying the signature of the party" means, the person, who is verifying the proceeding and not by the person on behalf of whom the proceedings verified. The word with an affidavit verifying the signature of the party should be taken as the person, who is verifying the proceedings alone and not the principal. A conjoint reading of the next sentence, ie., "stating the reason of his inability to sign or verify the proceedings" unambiguously clear that the reason for his inability is the inability of the principal and that should be stated by the agent since, the next sentence, which starts with "and proving the means of knowledge of the facts set out in the proceedings of the person signing or verifying the same". In other words, if the verification to be signed by the



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Principal himself, there is no meaning in stating the affidavit about proving the means of knowledge of fact set out in the proceedings.

7.The learned Counsel further submits that Rule 33 of the Andhra Pradesh, Civil Rules of Practice is similar to the Rule 17 of our Rules. Rule 32 is similar to our Rule 16 of Civil Rules of Practice and he also relied on the judgment of the Hon'ble Division Bench of Andhra Pradesh High Court in **Natubhai Chotabhai Patel Vs Patnam Shakuntala and another**, reported in **2006 SCC Online AP 1248** wherein it is held that the very affidavit itself is not necessary in the case of verification by the Agent, who appears and pleads through the Counsel.

8.The learned counsel for petitioner further submits that it is not a question of delegating power. The power given by the company to the Managing Director is an irrevocable power of attorney and it will not end. Therefore, this irrevocable power of the board has authorised the Managing Director to execute the power of



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attorney in favour of the Trans India Resorts Ltd on receipt of full consideration through bank. Since the power is an irrevocable one and the same has to be considered as it was dismissed on the ground of affidavit, which is also not required.

9.The counsel for petitioner further submits that the property was sold in the year 1995 itself and the suit was filed only in the year 2010 and 2014 in the name of Managing Director alone and not in the name of the company. If the court goes to the extent of not recognising the power, no one will be available to defend the suit and the plaintiff in that case will obtain an exparte decree and that is not in the best interest of justice. The question of validity of power can be agitated only in the main suit and in the event the Court feels that the affidavit is necessary, the court is not supposed to dismiss the suit but to remand the matter for filing of the affidavit.

10.Per contra the learned Counsel for the respondent submits that the petitioner has not produced the original copy of the alleged power deed dated 07.12.1995. The



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petitioner has merely produced a xerox copy notarised by a notary public at Chennai even though the power of attorney deed is claimed to have been executed at Bombay. Hence the power of attorney could not have witnessed the execution of the original document at Bombay while notarising the xerox copy of the power deed at Chennai, which has been originally registered and executed at Bombay. As the document was not executed before the notary public at Chennai and it was originally executed at Bombay and therefore, such a notarised xerox copy is inadmissible. This Court in *Schmenger GMBH and Compay Leder Vs Saddler Shoes Private Limited* reported in 2010 SCC Online Mad 6539 has categorically held that xerox copy of the power deed is inadmissible and therefore, the petitioner cannot be recognised as a power agent merely by producing a xerox copy of the power of attorney deed. This Court has given sufficient opportunity to the petitioner to produce the original power of attorney deed and the petitioner has never produced the original power of attorney deed.

11. The learned Counsel for the respondent further submits that the petitioner has not produced the copy of



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the memorandum/ Articles of Association by the Principal Company and has also not produced resolution of the Board of Directors of the 1st defendant company authorising the Managing Director or the petitioner herein to defend the suit and appear on behalf of the company. The learned Counsel for the respondent relied on the following judgment in support of his contention:

1.Schmenger GMBH and Company Leder Vs Saddler Shoes Limited 2010 SCC Online Mad 6539:

2.Haryana State Co-Operative Supply & Marketing Federation Ltd, Coimbatore Vs M/s.Jayam Textiles and another;

3.Sree Gokulam Chit & Finance Co(P) Ltd Vs S.Shanthi

12.This court considered the rival submissions and perused the materials placed on record.

13.The petition in IA.No.235 of 2014 in OS.No.56 of 2014 has been filed under Order 3 Rule 2 of the Code of Civil Procedure r/w Rule 16 of the Civil Rules of Practice for recognising one Srinivasan, son of Muthaiah Pillai residing at Flat No.C17, IHFD Township, Adanur,

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Sripreambudur Taluk as the power agent of the Hotel Ornate (Nilgiry) Private Ltd, Mumbai who are the 1st defendant in the civil suit.

14.The trial court dismissed the said interlocutory application by referring to Rules 16 and 17 of the Civil Rules of Practice that an affidavit authorising the power agent was not filed by the principle and that the Managing Director of the company cannot make further delegation by appointing a power agent to conduct the case.

15.The petitioner company is a registered company and the Managing Director of the company executed a registered irrevocable power of attorney vide Doc.No.1111/1995 dated 07.12.1995 in favour of the agent one Srinivasan. The petitioner relying on Natubhai Chotabhai Patel v. Patnam Shakuntala, reported in (2012) 4 ALD 553 would content that Rules 16 and 17 of the Civil Rules of Practice are not mandatory and these provisions are only applicable to parties, who appear through agents instead of legal practitioners. This argument regarding Rules 16 and 17 of the Civil Rules of Practice is of no use, if the agent has

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no authority to act on behalf of the company. When the power of attorney holder does not qualify as the authorised person to contest the suit, the other procedural aspect regarding the requirement of an affidavit under the Civil Rules of Practice is of no importance in this case. Therefore without going into the merits of the argument of the learned counsel for the petitioner regarding the requirement of an affidavit, the primary question to be determined is whether the power of attorney holder is duly authorized to sign the pleadings on behalf of the 1st defendant company.

16.A person has no right to represent a company registered under the Companies Act without the Board of Directors conferring a specific authority on the individual to represent the company. A managing director of the company is not a competent person to represent the company in a suit unless he is empowered under the memorandum or articles of association. In absence of any conferment of power to any specific person in the company, only the person authorised by the resolution of the board of directors is the competent person to represent the company.

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It is relevant to refer the judgment of this Court in

Schmenger GMBH and Company Leder Vs. Saddler Shoes Private Ltd, reported **2010 SCC Online Mad 6539** wherein this court after considering various judgments on this aspect held as follows:

"20. In the decision reported in AIR 2000 HP 11 (cited supra), it is held by the High Court of Himachal Pradesh that even though the suit was filed by the Managing Director of the plaintiff-Company, it is the duty of the plaintiff to prove that he is the competent person and he has the authority to file the suit on behalf of the plaintiff-Company therein. But admittedly, in the case on hand, none of the documents had been filed before Court to show that the Liaison Officer was duly authorised to institute the suit. As per Ex.P-1 (xerox copy) and its original Ex.P-10, the Liaison Officer Mr. Balagopal is authorised to take any decision independently as far as the present C.S. No. 689 of 1999 is concerned.

21. As per the decision reported in AIR 1991 Del 25 (cited supra), the individual Directors have such powers only as are vested in them by the Memorandum and Articles of Association. To



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prove the same, in the present case, neither the Articles nor the Memorandum of Association, had been filed before Court. Even as per the Division Bench decision of this Court reported in 1997 SCC OnLine Mad 766 (cited supra), the suit having been filed without there being any Resolution and as the Corporation/Company can only file a suit if there is a Resolution for the same, the suit was not filed by an authorised person under Order 29 Rule 1 of CPC, and hence, the Division Bench held that the suit as such was not maintainable.

22.As per the decision of the Supreme Court reported in (1996) 6 SCC 660 (United Bank of India v. Naresh Kumar), the plaint can be signed and verified by a competent person and even during the appellate stage, the appellate Court, in exercise of its power under Order 41 Rule 27 CPC, can require a Power of Attorney to be produced and the appellate Court can order the competent person of the Company to be examined as a witness to prove the ratification. In the case on hand, in the additional written statement filed by the defendant, the competency of the Liaison Officer has been questioned by the defendant, even though the plaintiff-Company filed the rejoinder/reply statement to the said



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additional written statement, it did not let in any oral and documentary evidence to prove that the person, namely Mr. Mukhtar Parvez, Liaison Officer was authorised by the competent authority to verify the plaint and institute the suit.

23. The abovesaid decision reported in (1996) 6 SCC 660 (United Bank of India v. Naresh Kumar) (cited supra), has been referred to by the High Court of Himachal Pradesh in the decision reported in (2004) 118 Comp Cas 328 (Apple Valley Resort v. H.P. State Elec. Board), in which it was observed by the High Court of Himachal Pradesh that Order 29, Rule 1 of CPC only authorises the persons mentioned therein to sign and verify the pleadings on behalf of a Corporation/Company and it does not authorise such persons to institute an action on behalf of a Corporation/Company; the question of authority to institute an action on behalf of a Company is not a technical matter; it has far-reaching effects and it often affects policy and finances of the Company; therefore, unless a power to institute an action is specifically conferred on a particular Director, he would have no authority to bring an action on behalf of the Company; the power to



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institute an action on behalf of the Company can be conferred on a Director or any other Officer of the Company only by the Board of Directors by way of a Resolution in that regard; in the absence of a specific provision of the Board of Directors authorising the Liaison Officer to institute the petition (suit) for and on behalf of the Company or power conferred on the Director by the Memorandum and Articles of Association, the petition (suit) cannot be said to have been laid by a duly authorised and competent person for and on behalf of the Company; the High Court of Himachal Pradesh further held that the suit was bad and liable to be dismissed on that ground alone.

24. Since the plaintiff neither filed the Memorandum/Articles of Association, nor the Resolution of the Board of Directors of the Company, authorising the Liaison Officer namely the person to verify the plaint and institute the suit. Hence, as per the decisions cited above, I am of the view that the suit itself is not maintainable.

25. In the present case, no scrap of paper had been filed before this Court to show as to who is the person, namely as to whether the



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Liaison Officer is the competent person authorised by the Board of Directors in their Resolution in the Meeting, to verify the plaint and institute the suit. Hence, the suit filed by the Liaison Officer on behalf of the plaintiff-Company, is not maintainable. The second issue framed in this suit is answered against the plaintiff."

17. The petitioner by relying on the xerox copy of a power deed dated 07.12.1995 has filed the present interlocutory application under Order 3 Rule 2 CPC to recognise one Srinivasan as power agent. This power agent derives its power from the power deed which is executed by the Managing Director of the petitioner company who derives the right from the Board of Resolution Dated 24.06.1994 which is extracted here under,

"Resolved that permission be and is hereby accorded to the managing director Mr. Jaimal K Shah to sign the agreement of the sale placed before the board on behalf of the company for the sale of the properties at Ooty and Kodaikkanal with our banker Bank of Tokyo and State bank of Travancore (on behalf of the buyer M/s. Trans Indian Resorts Ltd, Chennai) and it



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is further resolved to authorize him to execute the sale deeds or power of attorney as required by Trans India Resorts Ltd on receipt of full sale consideration by our banker."

18. The Board of resolution authorises the Managing Director only to sign the agreement of sale on behalf of the company to sell the properties at Ooty and Kodaikanal. The petitioner has filed neither the memorandum nor articles of association enabling the Managing Director to institute a suit. There is no board of resolution or authorization enabling the agent nor the managing director to represent the company and conduct the suit on its behalf. The copy of the authorization letter dated 24.06.1994 produced by the petitioner is only a resolution of the petitioner company permitting the Managing Director to sign the agreement of sale and sale deeds to sell their properties in Ooty and Kodaikanal. Only based on this resolution, the Managing Director executed the power of attorney dated 07.12.1995. The said resolution dated 24.06.1994 nowhere authorises the Managing Director to conduct any case on behalf of the company. When the

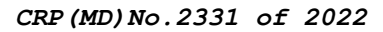


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principal himself doesn't have any powers to exercise, he cannot delegate it to his agent. The power of attorney executed for the purpose of selling the properties cannot be used for conducting this suit.

19. Further, no explanation is provided by the petitioner for producing the Xerox copy of the power of Attorney which in the eyes of law is not a substantial piece of evidence. The ratio in Schmenger GMBH and Company Leder (Supra) applies to this aspect as well where it was held that when the company failed to adduce the reason why preliminary evidence was not filed as per section 65(a) of the Indian Evidence Act, the xerox copies cannot be a reliable piece of evidence.

20. In view of the above discussion, the petitioner fails to prove that he is authorised by the Board of the company to conduct the suit on its behalf. Since he lacks the necessary authority, the petitioner company represented through the power agent cannot maintain this petition under Order 3 Rule 2 of the Code of Civil Procedure. Therefore this court is of the view that the other procedural aspects



21. In the result, this civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

07.03.2023

To

The District Munsif cum
Judicial Magistrate No.1,
Kodaikanal.



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B.PUGALENDHI , J.

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