

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 332/2007**

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Date of Decision: January 30, 2009

BERJESH GOYAL & ANR. Petitioners
Through Mr. S.K. Bansal, Advocate

versus

DAILY FOODS (INDIA) Respondent
Through Ms. Prathiba M. Singh with
Mr. J.P. Karunakaran,
Advocates.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT

MANMOHAN, J: (Oral)

1. By the present petition under Article 227 of the Constitution of India, the petitioner seeks setting aside of Order dated 24th January, 2007 passed by learned Additional District Judge in C.S.(O.S.) No. 400 of 2003 being a suit for declaration and injunction.

2. The said suit was initially filed in this Court being C.S. (O.S.) No.2136 of 2001, but stood transferred to the District Court, Delhi and thereon it was renumbered as C.S. (O.S.) No.400

of 2003. The petitioner is the defendant in the suit while the respondent is the plaintiff. In the suit, trial has commenced and Rakesh Kumar, the Plaintiff and the alleged sole proprietor of M/s Daily Foods (India) as PW1 has tendered his evidence being Examination in Chief.

3. On 24th January, 2007 the suit was listed for cross examination of Rakesh Kumar PW1. On that day, the counsel for the petitioner, in whose favour the petitioner had signed and executed the Vakalatnama, gave an authority letter to one Mr. A.K. Sahu, Advocate authorizing him thereunder to appear, argue and cross examine the witness on his behalf. A copy of the said authorization letter is filed as Annexure-G to the petition. Accordingly, on 24th January, 2007 the said Mr. A.K. Sahu, Advocate duly appeared before the court.

4. However, learned ADJ, by virtue of the impugned order dated 24th January, 2007 did not recognise the said authority letter on the premise that neither the Advocates Act nor the Code of Civil Procedure (hereinafter referred to as 'the CPC') recognises nor permits any such authority and as such the learned ADJ did not permit Mr. A.K. Sahu, Advocate to cross examine the respondent/plaintiff's witness being PW1. On such a finding the respondent closed his evidence in the suit and thereafter the learned ADJ listed the suit for petitioners evidence by way of affidavit and adjourned the suit for the said purpose.

5. It is petitioners Counsel's submission that once an advocate has been authorized by a Counsel holding a vakalatnama from the

client he ought to have been permitted to cross examine the witness. The right to cross examine ought not to have been closed. The counsel relied upon Order 3 Rule 4 of the CPC. The same reads as follows:

"[4. Appointment of pleader

(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.....

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

*(a) the names of the parties to the suit,
(b) the name of the party for whom he appears, and .
(c) the name of the person by whom he is authorized to appear :*

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.]"

6. He submitted that from the above provision it was clear that the CPC itself provides that one pleader can be permitted by another Pleader duly authorized by the party to plead the case and further the right to cross examine is part of the right to plead before a Court. Reliance was also placed on the format of a vakalatnama contained in the CPC in Form – 19. The relevant extract of Form-19 is set out hereunder:-

"Vakalatnama – "advocate is hereby appointed as counsel to appear, plead and act on behalf of the undersigned, in any manner, he thinks it proper, either himself or through any other advocate" and in particular to do the following namely –

To receive any process of court (including any notice from any appellate or revisional court) to file any applications, petitioners or pleadings, to file, produce or receive back any documents, to withdraw or compromise the proceedings, to refer to any matter to arbitration, to deposit or withdraw any moneys, to execute any decree or order, to certify payment, and receive any moneys due under such decree or order."

(emphasis supplied)

7. Learned Counsel for petitioners also relied on Chapter V Rule 1 of the Delhi High Court Rules which clearly specifies the rights of a pleader appointed by a party. The relevant extract of Delhi High Court Rules is set out hereunder:-

CHAPTER V
Vakalatnama

1. Execution and filing of Vakalatnama—*An advocate on his filing a Vakalatnama duly executed by a party shall be entitled to act as well as to plead for the party in the matter and to conduct and prosecute all proceedings that may be taken in respect of such matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review, execution and appeal in the High Court and to take all such other steps as he may be specifically authorised by the power of attorney.*

(emphasis supplied)

8. The Petitioners' Counsel also relied upon the following judgments in support of his arguments:-

A) ***Kota Co-operative Agricultural Bank Ltd. and etc. vs. The State of Karnataka and Another*** reported in ***AIR 2003 Karnataka 30*** wherein it has been held as under :-

"10. At this stage, we find it advisable to refer to Section 119 of the CPC, which empowers the High Court to make rules concerning advocates, vakils and attorneys. This section reads as under.--

Section 119. Unauthorised persons not to address Court.--Nothing in this Code shall be deemed to authorize

any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys"

11. Having so traced the power of the High Court to make rules concerning appearance of the Advocates to practice law in legal proceedings before the Court, now we can refer to Chapter V of the HC Rules, which is entitled as "Practitioners of the Court". Rule 3 of the HC Rules only appears to be relevant for resolving controversy at hand. This rule reads as under--

Rule 3--(1) When an Advocate retained to appear for any party on the vakalatnama in an appeal or other matter in the High Court is prevented by sickness or engagement in another Court or by other reasonable cause from appearing and conducting the case of his client, he may appoint another Advocate to appear for him. In such a case the Court if it sees no reason to the contrary, may permit the case to proceed in the absence of the Advocate originally engaged and permit his nominee to appear for him without a vakalatnama.

(2) Where an Advocate, who has filed a vakalatnama, engaged another to appear and argue his client's case but not to act for the client, the Court may permit such other Advocate to appear and argue, either without filing a vakalatnama or on filing a memorandum of appearance, instead of a vakalatnama."

B) *Prafulla Chandra Bidwai vs. All India Institute of Medical Sciences & Anr.* reported in **104(2003) Delhi Law Times 728 (DB)** wherein it has been held as under :-

"11. Rules 1 and 4 of Order 3 CPC are rules of procedure. Their primary object is to facilitate the progress of court proceedings and not to cause obstruction or inconvenience. Rule 1 gives a facility to a party to do acts in court which otherwise would have to be performed by the party in person. Object of Rule 4 is to have the authority in favor of a pleader to prevent perpetration of fraud by an unauthorized person taking steps without consent or knowledge of a party and to avoid waste of time of courts, which would otherwise be involved in deciding whether a particular step taken by a person, not duly authorized, was otherwise authorized."

C) Shastri Yagnapurushdasji and others vs. Muldas Bhundardas Vaishya and another reported in **AIR 1966 SC 1119** wherein it has been held as under :-

*"13.It will be recalled that the appeal memo as well as the Vakalatnama filed along with it were signed by Mr. Daundkar who was then the Assistant Government Pleader; and the argument is that since the Vakalatnama had been signed by respondent No. 1 in favour of the Government Pleader, its acceptance by the Assistant Government Pleader was invalid and that rendered the presentation of the appeal by the Assistant Government Pleader on behalf of respondent No. 1 incompetent. Order 41, Rule 1 of the Code of Civil Procedure requires, inter alia, that every appeal shall be preferred in the form of a memorandum signed by the appellant or his Pleader and presented to the Court or to such officer as it appoints in that behalf. Order 3, Rule 4 of the Code relates to the appointment of a Pleader. Sub-rule(1) of the said Rule provides, inter alia that no Pleader shall act for any person in any court unless he has been appointed for the purpose by such person by a document in writing signed by such person. Sub-rule(2) adds that every such appointment shall be filed in court and shall be deemed to be in force until determined with the leave of the Court in the manner indicated by it
In this case, the Vakalatnama had evidently been signed by respondent No. 1 in favour of the Government Pleader in time; and so, the High Court was plainly right in allowing the Government Pleader to sign the memo of appeal and the Vakalatnama in order to remove the irregularity committed in the presentation of the appeal. We do not think that Mr. Desai is justified in contending that the High Court was in error in overruling the objection raised by the appellants before it that the appeal preferred by the respondent No. 1 was incompetent."*

D) Lutfar Rahaman Laskar Haji Kabadali Naskar vs. The State of West Bengal and Ors. reported in **AIR 1954 Cal 455** wherein it has been held as under :-

15. If any Advocate, other than the Government Pleader, is to act on behalf of the Government or on behalf of a public officer, who is represented by the Government Pleader, such Advocate can only act after the Court is informed by the Government Pleader that that particular Advocate is acting under his directions for that case."

E) ***Doki Adinarayana Subudhi and Brothers vs. Doki Surya Prakash Rao*** reported in ***AIR 1980 Orissa 110*** wherein it has

been held as under :

7.....An Advocate, who appears on behalf of another Advocate engaged by a party can only plead but he has no power to 'act' on behalf of a party without a document in writing in his favour. It is the agency created by a client in favour of his Advocate which clothes the latter with the power to act on behalf of the former and it is by virtue of the vakalatnama that the client becomes bound by the actions of his Advocate within the limits of authority. In the absence of a Vakalatnama executed by the client and duly accepted by the Advocate and filed in Court, no agency at all is created and no undertaking so as to bind the client can be given."

9. On a perusal of the provisions set out hereinabove as also the legal position as contained in the authorities of various high courts, this Court is of the opinion that there is no bar on a Pleader duly authorized by a party under a vakalatnama to engage another pleader to plead the case on his or her behalf. The power to "plead" would include within its scope and ambit, the right to examine witnesses, to conduct admission & denial, to seek adjournments and to address arguments etc., as may be authorized. Such pleader however would not have the power to compromise a case, withdraw a case or do any other act which may compromise the interest of his or her client. In procedural matters it is not only expedient but also in the interest of speedy delivery of justice that young lawyers who work with pleaders duly authorized by clients are permitted to appear in matters. This is necessary for speedy disposal of cases and also as an encouragement to the younger professionals who are in the initial/formative years of practice.

10. Judges also have a duty to ensure that such young pleaders and lawyers who enter the portals of courts are permitted to learn but at the same time to ensure that the interest of parties are not permitted to be compromised. In view of the abovementioned provisions of law and case law, this Court is of the view that when a counsel has been authorized under a vakalatnama to represent his client, the junior of the said counsel can be permitted to appear on behalf of the counsel representing the said client as and when the counsel himself is not in a position to appear.

11. Consequently, the present Appeal is allowed subject to payment of Rs. 3500/- as costs to Delhi High Court Legal Services Committee and an opportunity is given to the petitioners to cross examine the respondent's witness. However, the petitioners shall ensure that the same is done within two hearings and no adjournments are taken in this regard.

12. Before this Court parts with this judgment, it would like to place on record its appreciation for both the Counsel, Mr. S.K. Bansal and Ms. Prathiba M. Singh, for the assistance rendered by them in the present case.

13. With the aforesaid observations, the present petition is allowed.

MANMOHAN, J

JANUARY 30th, 2009
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