

**HON'BLE THE ACTING CHIEF JUSTICE SRI C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION Nos. 758, 759, 760  
and 761 of 2019**

**COMMON ORDER:**

1. Assailing the order dated 07.02.2019 passed in I.A.No.854 of 2018 in I.A. No.1359 of 2001 in O.S.No.445 of 1998 on the file of the III Additional Senior Civil Judge, Vijayawada, wherein an application filed by petitioners/defendants under Section 151 of the Code of Civil Procedure (for short "the CPC") to prevent the wife of the plaintiff, who is representing the plaintiff in person as his GPA from examining the witnesses, is dismissed, the C.R.P. No.758 of 2019 is filed under Article 227 of the Constitution of India.

2. Assailing the order dated 07.02.2019 passed in I.A.No.817 of 2018 in O.S.No.104 of 1998 on the file of the III Additional Senior Civil Judge, Vijayawada, wherein an application filed by petitioner/defendant under Section 151 of the Code of Civil Procedure (for short "the CPC") to prevent the wife of the plaintiff, who is representing the plaintiff in person as his GPA from examining the witnesses, is dismissed, the C.R.P. No.759 of 2019 is filed under Article 227 of the Constitution of India.

3. Assailing the order dated 07.02.2019 passed in I.A.No.819 of 2018 in O.S.No.388 of 1997 on the file of the III Additional Senior Civil Judge, Vijayawada, wherein an

application filed by the petitioner/Defendant under Section 151 of the Code of Civil Procedure (for short "the CPC") to prevent the wife of the plaintiff, who is representing the plaintiff-in-person as his GPA, from examining the witnesses, is dismissed, C.R.P. No.760 of 2019 is filed under Article 227 of the Constitution of India.

4. Assailing the order dated 07.02.2019 passed in I.A.No.818 of 2018 in I.A. No.634 of 2017 in O.S.No.368 of 1995 on the file of the III Additional Senior Civil Judge, Vijayawada, wherein an application filed by the petitioner/defendant under Section 151 of the Code of Civil Procedure (for short "the CPC") to prevent the wife of the plaintiff, who is representing the plaintiff-in-person as his GPA, from examining the witnesses, is dismissed, C.R.P. No.761 of 2019 is filed under Article 227 of the Constitution of India.

5. Since the issue involved in all these revisions and the parties are one and the same, these revisions are being disposed of by this Common order.

6. The facts in issue are as under:-

The first respondent herein, who is the plaintiff in O.S.No.388 of 1997 filed a suit for partition. The plaintiff is a retired I.A.S. officer and his wife, who is a General Power of Attorney holder and also an Advocate, was representing him as G.P.A. The G.P.A. holder filed an application under Order

III Rule 2 of C.P.C., seeking permission to represent the first plaintiff in person, which was allowed. Against which, the petitioner/defendant preferred C.R.P.No.1784 of 2018, which was disposed of on 20.04.2018 directing the G.P.A. holder not to conduct the suit proceedings both in the capacity of an Advocate, and as G.P.A. The petitioner submits that when the 1<sup>st</sup> respondent nowhere states that the GPA in her name authorized her to make personal appearance on behalf of the plaintiff, the respondent has to engage a counsel to represent the case. Hence, cross-examining the witnesses in person, by the first respondent is against the earlier orders of this court in C.R.P.No.1784 of 2018. As such, the petitioner filed the present petition to declare the first respondent as not authorized to participate in the cross-examination of the witness.

7. A counter came to be filed denying the averments made in the petition. It is stated that she being the GPA of her husband, is appearing in person after obtaining permission from the court. Though she is enrolled in the bar council, she is not appearing in her professional capacity. As such, it urged that she is entitled to cross-examine the witnesses and the defendant cannot direct the plaintiff to show as to how she has to conduct the case. In C.R.P.No.1784 of 2018, the Hon'ble High Court has held that the GPA holder cannot represent before the court, both as a GPA and in professional capacity, but it did not say that she

in her personal capacity cannot conduct the suit proceedings. Hence, urged that she being the GPA of her husband, is competent to proceed with the suit in person which includes cross-examination of witnesses.

8. Referring to the judgments of A.P. High Court in **Surender Raj Jaiswal and others v. Vijaya Jaiswal**<sup>1</sup> and **Prabha P.Shenai v. Ispast Industries Limited**<sup>2</sup>, the trial court dismissed the objections raised, holding that since the G.P.A. holder is not representing before the Court as an Advocate and as she is representing before the Court as the wife of the plaintiff, she cannot be curtailed from cross-examining the witness.

9. The short point that arises for consideration is "Whether the G.P.A. holder of the plaintiff can be permitted to act like a counsel and cross-examine the witnesses?"

10. The plaintiff by name S.Ramachandra Rao is represented by his wife Smt. S.Hemalatha as G.P.A. holder from 1998 onwards in all the suits and during the course of the proceedings, applications were filed under Order III Rule 2 of the C.P.C., seeking to authorize the G.P.A. holder to represent the plaintiff. The said applications were allowed in three different suits, which came to be challenged by filing three revision petitions vide C.R.P.Nos.1784, 2221 and 2366

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<sup>1</sup> AIR 2003 AP 317

<sup>2</sup> 2016 Law Suit (Bombay) 271

of 2018. The Hon'ble High Court disposed of the C.R.Ps., restraining the G.P.A. holder from conducting the suit proceedings in the capacity of an Advocate, when she is holding G.P.A. It is stated that the registered G.P.A., that was executed by the plaintiff in favour of the G.P.A. holder, is silent with regard to the authority of representing in the form of the Advocate and instead of that, a right to engage a counsel was given. At the time of commencement of recording the evidence, an objection was taken that an attempt is being made by the G.P.A. holder to act in dual capacity i.e., both as a GPA holder and also as an Advocate for her husband, though the court directed that she can only opt for one. As such, the first respondent filed I.A.No.556 of 2018 seeking permission on behalf of G.P.A. holder to plead, present and argue his case in-person which was allowed by the trial court vide order dated 24.09.2018.

11. Challenging the same, C.R.P.No.6924 of 2018 came to be filed. After referring to the contents of G.P.A., the Court observed as follows:-

"8. But clauses 2 and 3 of the deed of General Power of Attorney authorises the G.P.A. holder to sign and verify plaints, written statements, affidavits etc., and also to appear in all courts. Therefore, the General Power of Attorney certainly authorises the holder to plead on behalf of the 1st respondent.

9. Merely because the wife of the party happens to be a lawyer, there is no prohibition in law for her to plead the case of her husband by holding a general power. The bar for a lawyer to take a dual role, is in the context of conflict of

interests, which correlate to ethical principles in respect of the profession. But when a lawyer's spouse is involved in litigation, there can be no bar for the lawyer to act as the power agent of the spouse, for doing whatever is authorised by the deed of General Power of Attorney to do.

10. Moreover, I do not know in what way the petitioner is aggrieved by such an act. If at all there are certain things only within the exclusive knowledge of the principal that can certainly be raised as a point. Therefore, I find no merits in the revision. Hence, the Civil Revision Petition is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed."

12. The said order came to be passed in the month of December, 2018. As stated above, earlier to this order, a common order was passed in C.R.P.Nos.1784, 2221 and 2366 of 2018, wherein, the applications filed under Order III Rule 2 of C.P.C., read with Section 32 of the Advocates Act were disposed of clarifying that Smt.S.Hemalatha will appear in-person as a power of agent to the first respondent and will not appear in her professional capacity. The said applications came to be filed under Order III Rule 2 of C.P.C., for the following relief, to represent her husband; to appear in person to plead and conduct the above proceedings.

13. The said applications were allowed by the Court below, forcing the first defendant to come up with the above three revisions. The objections of the learned counsel for the petitioner therein, were two fold, namely (i) that the wife-cum-General Power agent of first respondent also happens to be a lawyer, but she can either appear as a counsel or as

a power agent and not as both and (ii) that the address for service should be intimated by the first respondent in Vijayawada to enable the petitioners to serve notices and summons. The Hon'ble High Court held that once an application under Order III Rule 2 CPC is allowed, the power agent has two options; the first option is to appear in person as a power agent and second option is to act as an Advocate herself. Both cannot be combined in a single order.

14. Having regard to the order passed earlier, the defendants in the suit filed an application to prevent the wife of the plaintiff to represent the plaintiff in person as G.P.A. Referring to the judgments of High Court in **Sunrender Raj Jailswal and others v. Vijaya Jaiswal**<sup>3</sup> and **Prabha P.Shenai v. Ispat Industries Limited**<sup>4</sup> the trial court held that as the first respondent can be permitted to represent the first plaintiff in person; argue the matter and that the petitioner cannot raise any objection with regard to the entitlement of the respondent, who was permitted to represent in person with regard to the bar enshrined in C.R.P.No.1784 of 2018. It was also held that when the respondent is not representing in the court as an Advocate, and she is representing the court, as the wife of plaintiff who was permitted to represent the first plaintiff in person being his GPA holder and not as an Advocate, she cannot be

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<sup>3</sup> AIR 2003 AP 317

<sup>4</sup> 2016 Law Suit (Bombay) 271

curtailed from cross-examining the witnesses. Challenging the order passed, these Revisions came to be filed.

15. Sri V.S.R.Anjaneyulu, learned counsel appearing for the petitioner mainly relying upon the Division bench judgment of this court in **Madupu Harinarayana @ Haribabu rep. by his G.P.A., T.D.Dayal v. 1<sup>st</sup> Additional District Judge, Kadapa and others<sup>5</sup>**, and took me through paragraphs 3, 5 and 6 of the said judgment, which are as under:-

"28. A conspectus of Rules 1 and 2 of Order III of Code of Civil Procedure, Section 2(a) and Sections 29, 30, 33, 34 of the Advocates Act, Rule 2 of Section 34 Rules and Code of Criminal Procedure would show that all the pleadings in a proceeding shall be made by the party in person, or by his recognized agent. A party in person, and a recognized agent, have to make an appointment in writing (vakaltnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf of the party, or his recognized agent, who engaged the advocate. Sections 29 and 30 of the Advocates Act make it clear that advocates are the only recognized class of persons entitled to practise law, and such an advocate should have been enrolled as such under the Advocates Act. Section 32 of the Advocates Act empowers the court to permit any non-advocate to appear in a particular case. This only means that any person has to seek prior permission of the Court to argue a case if he is not an advocate enrolled under the Advocates Act. Further, it is an offence for a non-advocate to practice under the provisions of the Advocates Act. Section 45 prescribes a sentence of six months imprisonment.

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<sup>5</sup> 2011(2) ALT 405 (D.B)



31. The statutes and precedents are clear on the point. It is only advocates, whose names are entered on the rolls of the state Bar Council, who have the right to practice in any Court. If a person practices in any Court without any such authority, and without such an enrolment, it would be committing an offence under Section 45 of the Advocates Act punishable with imprisonment for a term which may extend to six months. Therefore the GPA Sri T.D.Dayal is not entitled to appear and argue for the Appellant. He has no right of audience in this case or any other case."

16. The Hon'ble Division Bench in the Judgment referred to above observed that any person approaching the court seeking some legal redressal has to scrupulously, and without exception, follow the procedural rules and regulations framed by the High Court. The rules made by the High Court, Civil Rules of Practice and Circular Orders and Criminal Rules of Practice and Circular Orders as well as various other procedural rules made under various statutes supplant the two codes. A party to the proceeding can either himself appear as a party in person to ventilate his grievance or engage an advocate enrolled on the rolls of the Bar Council of Andhra Pradesh (a statutory professional body constituted under the Advocates Act, 1961). A party to the proceedings may authorize another by giving a Power of Attorney to appear in the case, file affidavits, instruct lawyers and act on his behalf. It was held that the G.P.A. holder cannot plead and/or argue for his principal. If a person, other than an advocate enrolled on the rolls of the Bar council, appears in court, it is an offence punishable

under law. Power of Attorney Act defines “power-of-Attorney” to include any instrument empowering a specified person to act for and in the name of the person executing it. If so empowered, the donor may execute any instrument or do anything in his own name and signature by the authority of the donor of the power. Section 4 of the POA Act casts an obligation on the POA to verify the affidavit, give a declaration or other sufficient proof of the POA, and to deposit the same in the High Court or the District Court within the local limits of whose jurisdiction the instrument may be. Order III C.P.C., deals with recognized agents and pleaders. Rule 1 thereof enables the recognized agent to make appearance, application or act in any court. Rule 2 explains recognized agents as “agents of parties by whom such appearances, applications and acts may be made or done”. These are the persons holding POA authorizing them to make an application and act on behalf of such parties. Section 2(a) of the Advocates Act defines, “Advocate” to mean an advocate entered in any roll under the provisions of the said Act. Section 2(15) of the CPC defines “Pleader” to mean any person entitled to appear and plead for another in court.

17. It would also be appropriate to refer to the rule framed by the High Court under Section 34 of the Advocates Act, which is as under:

“34. Power of High Courts to make rules.—

(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.

(2) Without prejudice to the provisions contained in subsection (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith."

18. After referring to the provisions of Advocates Act and the Rules made by the High Court and the circulars issued, this Court in ***Madupu Harinarayana's case*** (supra) held that all the pleadings in the proceedings should be made by party in person as recognized agents. A party in person, and a recognized agent, have to make an appointment in writing (vakalatnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf of the party, or his recognized agent, who engaged the advocate. Section 32 of the Advocates Act empowers the Advocate to permit any non-advocate to appear in a particular case. This means that any person has to seek prior permission of the Court to

argue the case if he is not Advocate enrolled under the Advocates Act.

19. From the above observations made, it is clear that Section 32 of the Advocates Act empowers the court to permit any non-advocate to appear in a particular case after seeking prior permission of the court to argue a case if he is not an Advocate. It would be appropriate to extract Section 32 of the Act which is as under:

**"32. Power of Court to permit appearances in particular cases.**—Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case."

20. Prima-facie, a reading of the above provision vis-à-vis the law laid down by the Division Bench show that it is only the Advocate, who has enrolled under the provisions of the Advocates Act, has the right of practice in any court. Any violation of the same would amount to committing the offence under Section 35 of the Evidence Act.

21. In the instant case, the wife of the plaintiff, who is representing her husband, intends to examine the witness as a G.P.A. holder. She is not arguing the matter as an Advocate for the plaintiff nor she is cross-examining the witness as a lawyer for the first plaintiff, though she is a lawyer practicing in the said court.

22. Though the judgment in C.R.P.No.6924 of 2018 between the same parties held that there is no bar for the petitioner to participate in the trial, but the Division Bench judgment of this Court prohibits participation by the G.P.A. Holder. The same was not brought to the notice of the learned Judge. As observed by me earlier, the Division Bench of this Court categorically held that the G.P.A. holder cannot plead and/or argue for his principal. If a person, other than an Advocate enrolled on the rolls of the Bar Council, appears in the Court it is an offence punishable under law.

23. It may be true that the respondent herein, who is also an Advocate, is doing the case of her husband as a General Power of Attorney holder. It may also be true that the same may not cause much prejudice to the petitioners. But, in view of the judgment of the Division Bench of the combined High Court, C.R.Ps. are allowed, however, giving liberty to the respondent to conduct the case as an Advocate since she is a practicing Advocate as well.

24. There shall be no order as to costs. Miscellaneous Petitions pending if any in these revisions shall stand closed.

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**ACTING CHIEF JUSTICE C. PRAVEEN KUMAR**

Dt: 28.06.2019  
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