

Regular Civil Suit No.297/2021**:: ORDER BELOW EXH. 46 ::**

1. Read this application and reply vide Exh.48. Heard Ld. Advocate Mr. N.G.Vadodariya for the defendant No.5 and power of attorney holder of the plaintiff – Dr. P. C. Gandhi.
2. Ld. Advocate for the defendant No.5 has vehemently argued that original plaintiff is Smt. Jyoti Pankaj Gandhi and on behalf of her, power of attorney holder – Dr. Pankaj Champaklal Gandhi has not any power to proceed the matter or to make any arguments in this proceedings. The plaintiff has filed this suit for dissolution of the partnership firm M/s. Gandhi Vadia Associates. The power of attorney holder of the plaintiff is not an advocate as enrolled in the Bar Council of Advocate, therefore, he has no right to argue in the matter. He has only right to file the documents, affidavits, reply but he cannot cross examine witness or argue the matter on behalf of the plaintiff and he has placed reliance on the following judgments of the Hon'ble Apex Court:-
 - (a). *Goa Antibiotics & Pharmaceuticals Ltd. V/s. R. K. Chawla & Another – [2011] 7 SCR 846.*
 - (b). *2001 (3) GLR 2124 – Jaymal Thakore V/s. Charity Commissioner Gujarat State & Ors.*
 - (c). *AIR 1955 Bom 262 – Aswin Shambhuprasad Patel V/s. National Rayon Corporation Ltd.*
 - (d). *Hon'ble High Court At Calcutta – G.A. No.3659 of 2017, dtd.21/02/2019*
 - (e). *(1969) 1 MLJ 207 – D. Sornam by power of attorney V/s. State of Madras.*

3. On other hand, the power of attorney holder of the plaintiff has resisted the arguments advanced by the Ld. Advocate for the defendant No.5 and argued that the plaintiff is his wife and he is the Karta of HUF and therefore, he is authorised to argue in the matter. Further, he has stated that the suit/plaint Exh.1 is signed and duly affirmed by his wife – plaintiff and he has submitted appearance memo vide Exh.2. The defendant has not taken any objection at the first instance regarding this issue. The defendant No.5 has wanted to delay the matter and therefore, he has submitted this type of vexatious application. Further, he has argued that as per the Section-32 of the Advocate Act, 1961 not only an advocate, but also any person for any particular case has authorised to appear and plead and to argue in the matter. Further, he has argued that the Hon'ble Gujarat High Court has also given permission to him in the Special Criminal Application No.7291/2019 for appearance and arguing in the High Court on behalf of his wife as power of attorney. Therefore, he has prayed to reject this application with penal costs and he has also placed reliance on the following judgments of the Hon'ble Apex Court.
 - (a). (1994) 1 SCC – S. P. Chengalvaraya Naidu (dead) by Lrs. V/s. Jagannath (dead) by Lrs. and others.
 - (b). Hon'ble High Court of Judicature at Bombay - Summary Suit No.2828 of 1998, dtd. 09/03/2016 - Mrs. Prabha P. Shenai V/s. M/s. Ispat Industries Ltd.
4. Looking to the submissions of the parties and papers on the record, there is dispute between the parties that whether power of attorney holder has right to argue or to make pleading or to produce evidences before the Court on behalf of the plaintiff. Dr. P. C. Gandhi is power of attorney holder of the plaintiff and he wants to argue and to submit evidence and to make oral argument on behalf of his wife, on the basis of power of

attorney given by the plaintiff to him vide Mark-4/2 & 4/3. Looking to the dispute between parties, at this juncture, it is required to see the relevant Order-III, Rules-1 and 2 of the C.P.C. and Section-2(15) of the C.P.C. and Sections-30, 32, 33 of the Advocate Act, 1961 as under:-

→ **Order-III, Rules-1 and 2 of the C.P.C**

"RECOGNIZED AGENTS AND PLEADERS

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."

→ **Section-2(15) of the C.P.C.**

"2. Definitions :- In this Act, unless there is anything repugnant in the subject or context –

(1) to (14) xxx (15) "pleader" means any person entitled to appear and plead for another in Court,
and includes an Advocate, a Vakil and an Attorney of a High Court;
(16) to (20) xxx"

→ **Sections-30, 32, 33 of the Advocate Act, 1961.**

30. Right of advocates to practise. - Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends, -

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence;
and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

32. Power to 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.

33. Advocates alone entitled to practise. - Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.

5. Looking to the above provisions of the law, first of all, it is required to see whether power of attorney holder can be said an advocate ? As per the Sections-30 and 33 of the Advocate Act, the power of attorney

holder cannot be said an advocate. The power of attorney holder is recognized agents as per the order-3, rule-2(a) of the C.P.C. The Hon'ble High Court of Gujarat has in the case of 2001 (3) GLR 2124 – *Jaymal Thakore V/s. Charity Commissioner Gujarat State & Ors.* (submitted by the Ld. Advocate for the defendant) held in para-14.

“14. The provisions of Order III, Rule 1 and 2 repeatedly came for construction and application before law Courts in civil proceedings. For the purpose of this case, reference to one of the earlier decisions of Chhagla, C.J., in Aswin Shambhuprasad Patel & Ors. v. National Rayon Corporation Ltd., AIR 1955 Bom. 262 would be profitable. Construing the provisions of Order III, Rule 1, it was held that the expression "appearance, application or act" in or to any Court in Order III, Rule 1 of C.P.C. does not include pleading. The recognised agent under power of attorney from the party in his favour may appear, file an application or act on behalf of the party in the proceedings as "recognised agent" of the party. Such power or -- authority to appear, file application and act is also available to a 'pleader', but to plead in the case, that is to do something for the party in the case other than what the 'recognised agent' can do, that is to practice law or plead for the client, is the monopoly right only of a pleader or a registered Advocate. A 'recognised agent' appointed by a party may be holding a duly executed Power of Attorney cannot be said to be a 'pleader' and can have no right to plead.”

6. The power of attorney holder of the plaintiff has vehemently argued that he has power of attorney of the plaintiff and as a holder of power of attorney, he has right to appear before the Court and act, plead and argue on behalf of the principal. He do not become an advocate due to holding power of attorney as per the Section-32 of the Advocate Act. Looking to

the Section-32 of the Advocate Act, the Section-32 does not confer any power of attorney holder to plead or practise law in the Court.

7. Hon'ble Gujarat High Court has in the case of 2001 (3) GLR 2124 – *Jaymal Thakore V/s. Charity Commissioner Gujarat State & Ors.* held in para-18:

“The Charity Commissioner, therefore, has stated that the petitioner being a holder of power of Attorney, and therefore, as a 'recognised agent', can appear on behalf of a party, can file documents or affidavits, can submit reply, but he cannot act as a 'pleader', in the sense that he cannot cross-examine the witnesses or argue the matter on behalf of his client which are acts in the nature of pleading or practising law within the exclusive monopoly of only enrolled Advocates.”

8. Moreover, the Hon'ble High Court has also held in above judgment para-18 that :-

“The recognised agent can appear, file applications, or act on behalf of a party, but he cannot be allowed to plead and practice law in a Court. The decision of Chhagla, C.J. (supra) was referred to and relied upon by the learned single Judge. Similar view was expressed by Justice Jagannath Rao, J., (as he then was) in the Andhra Pradesh High Court in a decision reported in Hari Om Rajender Kumar & Ors. v. Chief Rationing Officer of Civil Supplies, A. P., Hyderabad, AIR 1990 AP 340. Relying on the decision of the Supreme Court in Aswini Kumar Ghosh v. Arabinda Bose, AIR 1952 SC 369 and of Madras High Court in Thayarammal v. Kuppuswami Naidu, AIR 1937 Mad. 937 it was held that expression "to appear", "to act" would not permit a recognised agent "to practise" as used in Sections. 33 and 32 of the Advocates Act. The provisions of Order III, Rule 1 and Sees. 32 and 33 of the Advocates Act have been construed thus :-

"It has to be noticed that Section 33 of the Act uses the word 'practise' while Section 32 uses the word 'to appear' in the Courts etc. The word 'practise' means appear, act and plead, unless there is anything in the subject or context to limit its meaning. Therefore, the word 'appear' is only one aspect and does not take in the concept of 'pleading' without which, it cannot be equated to 'practising'. The right to appear in Court and plead for a principal as also the right to practise in Courts have to be distinguished from the other acts, which a power of Attorney can perform under Order 3, Rule 1, C.P.C. So far as the signing or verifying or doing other acts are concerned, these could be done by the power of Attorney duly authorised, therefore but so far as appearing or practising in Court are concerned, they are subject to the provisions of Sections 32 and 33 of the Advocates Act. As such the power of Attorney holder cannot plead or practise in Court for a principal unless specially authorised by the Courts in that behalf under Section 32 of the Advocates Act (1961)"

9. Looking to the ratio laid down by the Hon'ble Apex Court in the judgment of 2001 (3) GLR 2124 – *Jaymal Thakore V/s. Charity Commissioner Gujarat State & Ors.*, a person whether he is ordinary men or chartered accountant, who is recognized agent as understood in order-3, rule-1 of the C.P.C., can only act but cannot plead i.e. cannot examine, cross examine witness, not submitted argument before the judicial and quasi-judicial forums.
10. The power of attorney holder of the plaintiff has placed reliance in the case of *Mrs. Prabha P. Shenai V/s. M/s. Ispat Industries Ltd. - Summary Suit No.2828 of 1998, dtd. 09/03/2016 - Hon'ble High Court of Judicature at Bombay* and stated that power of attorney holder has right to appear and to argue in the case on behalf of the principal as per this

judgment, but looking to the fact and circumstances of this judgment is different. Moreover, the judgment of the Hon'ble Gujarat High Court (supra) has laid down the ratio that power of attorney holder is a recognize agent and he cannot act as submitting argument or examine or cross examine witness before judicial proceedings. Therefore, I am of the view that this judgment is not helpful to the plaintiff.

11. The power of attorney holder of the plaintiff has also placed reliance on *(1994) 1 SCC – S. P. Chengalvaraya Naidu (dead) by Lrs. V/s. Jagannath (dead) by Lrs. and others*. Looking to the facts and circumstances of the above cited judgments and the case on hand are vast difference, therefore, it is not helpful to the plaintiff.
12. Ld. Advocate for the defendant No.5 has put reliance on the following judgments:-
 - (a). *Goa Antibiotics & Pharmaceuticals Ltd. V/s. R. K. Chawla & Another – [2011] 7 SCR 846.*
 - (c). *AIR 1955 Bom 262 – Aswin Shambhuprasad Patel V/s. National Rayon Corporation Ltd.*
 - (d). *Hon'ble High Court At Calcutta – G.A. No.3659 of 2017, dtd.21/02/2019*
 - (e). *(1969) 1 MLJ 207 – D. Sornam by power of attorney V/s. State of Madras.*
13. Looking to the above cited judgments of the Hon'ble Apex Court has not permitted to plead and argue the matter to the power of attorney holder on behalf of the party.
14. The power of attorney holder of the plaintiff has vehemently argued that he is karta of the HUF known as P. C. Gandhi (HUF). Therefore, he has

right to argue before the Court on behalf of his wife, but looking to the entire pleadings/suit vide Exh.1, the plaintiff has not stated that there is a property of the HUF of P. C. Gandhi (HUF) and the power of attorney holder Dr. P. C. Gandhi is karta of this HUF. Moreover, the power of attorney holder has also not filed this suit as a karta of HUF, therefore, it cannot be considered.

15. The power of attorney holder of the plaintiff has vehemently argued that the Hon'ble Gujarat High Court has given permission him to appear before the Gujarat High Court in Special Criminal Application No.7291/2019 vide annexure-1 of the Exh.12. Looking to this certificate, Mr. Pankaj C. Shah is petitioner No.1 and he is power of attorney holder of petitioner No.2. Thus, he is one of the party in person in that case, but the case on hand, the power of attorney holder is not party in person. Moreover, looking to this certificate, it is not permission to the power of attorney for practicing in the Court. Therefore, this argument is also not helpful to the plaintiff.
16. The power of attorney holder of the plaintiff has argued that he has filed note of appearance and memo vide Exh.2 at the time of institution of the suit, but looking to this appearance memo (pursis Exh.2), it is only recorded by my Learned Predecessor and there is not given any permission to power of attorney for arguing the matter, plead i.e. cross-examine, examine witness or submitting argument in the Court on behalf of the plaintiff.
17. Looking to the above discussions, I am of the view that the power of attorney holder of the plaintiff who is also being a Doctor, is recongnized agent as per the order-3, rule-(3)(2) of the C.P.C and he can only appear, but cannot plead as examine, cross examine and also not

submitted argument before the Court. Therefore, it is not just and proper to permit him to argue in the matter. Therefore, I have passed following order in the interest of justice:-

-:: **ORDER** ::-

1. This application is hereby granted.
2. No order as to costs.

Signed and pronounced in the open Court on this 18th day of October, 2022.

DATE: 18/10/2022
PLACE: BOTAD.

[ILYAS KHAJMAHMADBHAI JANGAD]
PRINCIPAL SENIOR CIVIL JUDGE,
BOTAD
CODE: GJ00867