

ORDER ON I.A. No.49

1. This application is filed by the SPA holder defendants No.24 and 26 with a prayer to permit him to lead evidence on behalf of defendant No.24 and 26 and to contest the matter in the above suit.
2. In the sub-joined affidavit filed along with the I.A., the SPA Holder of defendants no.24 and 26 has sworn to the affidavit and contended that, defendant No.24 and 26 are his mother and father they are unable to hear properly and due to health problems they are unable to lead evidence before this court. Further it is stated that, the defendants no.24 and 26 have executed special power of attorney to him to lead the

evidence and to contest the matter. Hence prayed to permit him to lead evidence on their behalf.

3. On the other hand, the plaintiffs have filed objections and contended that, the applicant has not made out grounds to permit him to examine himself on behalf of defendants no.24 and 26. Further they have contended that, already defendants No.25 has examine on behalf of defendant No.24 and 26 as Dw.5 and he has been partly cross examined by the plaintiffs. Further it is stated that when the matter was posted for further cross examination of Dw.5 he remained absent and not offered for further cross examination. Further it is stated that the question of examining SPA by the defendant No.24 and 26 does not arise. Hence pays to reject the application.
4. Heard the arguments.
5. Upon considering the application, affidavit filed along with application, and objections the following point arises for my consideration-

P O I N T

1. Whether the applicant/SPA holder of defendant No.24 and 26 has made out grounds to permit him to proceed in this case as sought in the application?

2. What Order?

6. My answer to the above Points is as follows -

- Point No.1 - In the Affirmative
- Point No.2 - As per final order for the following –

REASONS

7. **Point No.1:** This application is filed by the applicant/S.P.A.Holder of defendants no.24 and 26 when case is posed for further defendant evidence with a prayer to permit him to proceed with matter on behalf of them as the above defendants are not able to appear before the court on some health grounds as unable to hear properly. Further it is stated that, the defendant No.24 and 26 are his father and mother.
8. The other side has resisted this application by filing objections, where the plaintiffs have contended that, this SPA cannot be permitted to lead his evidence on behalf of defendants no.24 and 26 as already the defendant No.25 lead evidence on their behalf.
9. Based upon the contents of application, reasons stated in the affidavit and objections, this Court of opinion that, the SPA of the defendant No.24 and 26

has made out sufficient reason to permit him to lead the evidence. Further it is stated that, defendant No.24 and 26 are having some hearing problem and unable to give evidence, hence they have appointed their son to prosecute the case since he has having personal knowledge about the facts.

10. As per the provisions of order III Sub-Rule (1) a partly could prosecute or defend the legal proceedings through a power of attorney holder or even a pleader.
11. Further the SPA holder can depose in place of principal, if he is having personal knowledge of the acts. Herein this case SPA holder has stated that, he is the son of defendant No.24 and 26 and he is conversant with the facts and circumstances of this case. In view of aforesaid reasons it is clear that, the partly cannot be prevented from prosecuting or defending the case through SPA. In view of above facts, reasons and preposition of law, the applicant/SPA holder can be proceed with the matter on behalf of defendants no.24 and 26 and can depose evidence on behalf of principal. Therefore In view of aforeside reasons, this Court hold the **Point No.1 In the Affirmative.**

12. **Point No.2** : In view of my above discussion, I proceed to pass the following –

ORDER

I.A.No.49 is allowed.

Consequently, the SPA Holder of defendants No.24 and 26 is permitted to proceed with the matter on behalf of defendants no.24 and 26.

Call on for further defendant evidence by 22.11.2023.

**Senior Civil Judge & JMFC.,
Khanapur**