

ORDER ON I.A.NO.1 U/ORDER 3 RULE 2(a) R/W
SECTION 151 OF CPC.

This application is filed by the plaintiff praying to permit her to appoint her General Power of Attorney holder Smt. Shalini D/o K.Thammanna to conduct and represent the above case as General Power of Attorney holder of the plaintiff and to contest the suit on her behalf in the above case in the interest of justice.

2. In the affidavit it is stated that due to her old aged ailments and not hearing properly not in a position to conduct defend proceed with the suit. Hence, she has executed a General Power of Attorney in favour of her daughter as she is having personal knowledge about the money transaction entered between the plaintiff and defendant. If the application is allowed no prejudice will be caused to the other side on the other hand, if the application is rejected she will be put to great hardship and loss. Hence, prayed to allow the application.

3. Per contra, the defendant No.3 contended that the alleged pronote in the above case is disputed one and not supported by any consideration under the negotiable instrument act. Further the deceased Gangadhar who was the father of this defendant had no necessity at all as he was Government Employee working as Sub-registrar and also no need to avail the alleged amount, these all disputes will be decided in the above case. Hence, the plaintiff is must and necessary to examine, the real truth will come out at the time of cross examination. The General Power of Attorney holder is not a party to the alleged document and not avail about the alleged transaction so, the General Power of Attorney holder is not having any personal knowledge to depose the case. The contents of affidavit are false. Prayed to reject the application.

4. Heard both the counsel perused the materials on record.

5. The points that would arise for the consideration of this court are:

1. Whether the application is deserved to be allowed?

2. What order?.

6. My findings on the above points are as under:

Point No.1: In the Affirmative .

Point No.2: As per final order for the following:

REASONS

7. **Point No.1:-** The plaintiff has filed this application when the case is posted for plaintiff evidence that due to old age she is not well and suffering from old age ailments and not hearing properly. Therefore she intend to prosecute the suit through GPA holder who is none other then daughter of the plaintiff and alleged to know the facts of the case.

8. Per contra, learned counsel for the defendant No.3 strongly objected and contended that the alleged transaction is alleged to have taken place between the plaintiff and father of the defendant and General Power of Attorney holder is not a party to the promissory note under such circumstances in order to elicit the truth the plaintiff must and shall examine. There is no need of appointing the GPA to prosecute the case.

9. The present suit is one for recovery of amount filed by the plaintiff alleging that the plaintiff and defendant No.1's husband are known to each other. He approached the plaintiff and borrowed a sum of Rs.5,00,000/- on 14.10.2018 from the plaintiff for his urgent family and other necessities and executed on demand promissory note in presence of the witness agreeing to pay the above amount with interest but, inspite of several request not turned.

10. In this regard this court would like to rely on the reported decision 2005 4 KCCR 2430 wherein Hon'ble your Lordship has held that GPA holder of the competent person to examine as a witness and speak to the fact of the case, which are within in knowledge -

If the evidence given by the power of attorney holder of a party is acceptable and proved as required under the evidence act the court cannot ignore the same.

11. So also the orders passed in WP.No.22105/2012 (GMCPD) reportable passed by the Hon'ble High Court of Karnataka dated 14.02.2014 wherein the Hon'ble lordship has observed that a party should be permitted to represented by a power attorney holder or a counsel as matter of right. But a party should not as matter of right drag the matter through a power of attorney holder once GPA holder enters witnesses box and give evidence whether the evidence is acted upon, whether it is direct evidence or hearsay evidence is to be decided by the trial court at the time of the appreciation of the evidence. On the ground that power of attorney holder has no personal knowledge of the case he cannot be prevented from entering the witness box and from deposing. From the above decision of law and provisions of law there is no bar to party from prosecuting the case through authorized GPA holder of party whether such GPA holder has got personal knowledge about the fact or is direct or hearsay evidence can only be decided at the time of appreciation of evidence by the court. This court finds no impediment in allowing the application. **Accordingly, Point No.1 is answered in the Affirmative.**

12. **Point No.2** : - In view of the above discussion , the following:-

ORDER

I.A.No.I filed by the plaintiff
U/Order 3 Rule 2(a) R/w Section 151 of
CPC, is hereby allowed.

The plaintiff is permitted to
prosecute the case through GPA holder in
accordance with law.

II ADD. SENIOR CIVIL JUDGE,
BALLARI.

For plaintiff evidence
call on 10.07.2023.

II ADD. SENIOR CIVIL JUDGE,
BALLARI.

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