

**ORDER ON INTERLOCUTORY APPLICATION UNDER
ORDER VII RULE 11 R/W SECTION 151 OF CPC**

Counsel for the defendant filed the present application Under Order VII Rule 11 of CPC praying to dismiss the suit as not maintainable.

2. In the accompanying affidavit sworn by the defendant it is stated that, the suit is filed through GPA holder against the defendant for recovery of arrears of rent as mentioned in the plaint. The defendant filed written statement stating that, the plaintiff has no right to file the above suit on the ground that as on the date of filing the suit, plaintiff has not authorized Smt. Gayathri Devi to file the suit. The plaintiff has not stepped into witness box to depose her case. PW.1 named Smt. Gayathri Devi has given her evidence without furnishing GPA. The GPA not produced along with the plaint. Therefore presentation of plaint by the GPA holder is not in accordance with law. Hence, prayed to dismiss the suit.

3. The plaintiff filed objection contending that, the application is not maintainable either in law or on facts of the case. Hence, the same is liable to be dismissed in limine. The application does not contain sub-provision of rule 11 of Order VII of CPC to challenge the maintainability of the suit and the defendant has

not mentioned under what sub-provision the suit is not maintainable. The reason given in the affidavit to challenge the presentation of the suit does not come under either under order VII rule 11 or any of sub-provisions.

4. It is further contended that, the plaintiff filed a petition for eviction against the defendant in HRC No.75/2013 on the file of VIII Addl. Civil Judge, Mysuru against the defendant. In the said petition the present General power of attorney holder produced the GPA and conducted the petition which was allowed. Later the GPA holder filed execution Petition and got the possession of the suit schedule premises from the defendant. Not producing the GPA at the time of filing of suit is only a small irregularity which is rectified now by producing the same. The defendant filed this application only to drag on the proceedings. The plaintiff is more than 92 years old and she is depending on the rent for her living. The defendant can not take shelter under the alleged technicality to avoid paying the rents and harass the aged plaintiff by dragging on the proceedings. Hence prayed to dismiss the application with cost.

5. Heard counsel for the plaintiff. Counsel for the defendant remained absent inspite of sufficient opportunity. Hence, the arguments of the defendant/ applicant taken as nil.

6. Perused the materials on record.

7. The points that would arise for my consideration are as follows;

1. Whether the defendant/ applicant has made out grounds to reject the plaint?

2. What order ?

8. My findings to the above points are as under:

Point No.1 : in the “**Negative**”

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

REASONS

9. **Point No.1:** The suit is one for recovery of arrears of rent from the defendant. The plaintiff filed a eviction petition and got the possession of the rented property and the present petition is for the arrears of rent. The defendant denied the plaint averments by stating that, he has paid rent to the plaintiff upto date, but the plaintiff not issued the receipts. Hence, prayed to dismiss the suit. In the present application the defendant prayed to dismiss the suit as not maintainable as the plaintiff filed the present suit through her General power of attorney holder, but not produced the said document along with the plaint. Hence, prayed to dismiss the suit.

10. Perused the materials on record, wherein it is seen that, the plaintiff filed the present suit along a special power of attorney dated 18.08.2015 which is marked at Ex.P9. On perusal of the same it is seen that, the said special power of attorney is executed to conduct the eviction petition before the Hon'ble II Addl. Civil Judge Mysuru. Therefore, the defendant taken a defence that, the plaintiff not authorized her GPA holder to conduct the present case under the above special power of attorney. In this background the plaintiff produced the GPA executed on 17.11.2023 along the application filed under Order III Rule 2 of CPC. In the decision passed by Hon'ble High Court of Karnataka reported in 2017(2) KCCR 1352 between Amit Roy Vs Jyothendra Sinhji Vikramasinhji it is held that, non filing of power of attorney along with the plaint does not render the suit non-maintainable. Further as per section 196 of Contract Act the Principal can ratify the act of his agent and it will have the same effect as if they had been performed by its authority. Therefore, the plaintiff produced the Special power of attorney along with the plaint and later produced recently executed General power of attorney along with the application. However, non filing of the GPA or SPA along with the plaint is not the ground to reject the plaint in any of the sub-provision of Order VII Rule 11 of CPC. Therefore the applicant has not made out any valid grounds to allow the application. Hence, I answer point No.1 in the **“Negative”**

11. Point No.2:- In view of my answers to Point No.1 in the “**Negative**”, I proceed to pass the following;

ORDER

Application filed by the defendant/applicant Under Order VII Rule 11 R/w Section 151 of CPC is hereby dismissed.

**Judge,
Court of Addl. S.C., & MACT
Mysuru**

**ORDER ON THE APPLICATION FILED BY
THE PLAINTIFF UNDER ORDER III RULE 2 R/
W 151 OF C.P.C.**

This is the application filed by the GPA holder of the plaintiff under Order III Rule 2 of CPC, seeking permission to represent the plaintiff as her PA holder in the above case.

2. In the affidavit annexed to the application the GPA holder of the plaintiff contended that, the plaintiff has filed this suit for the recovery of the arrears of due from the defendant. The plaintiff is her aunt and she know the facts of the case. The plaintiff herein had filed HRC NO.75/2013 on the file of the 8th Addl. Civil Judge, Mysuru against the defendant for his eviction from the premises on the ground of arrears of rent and use and occupation. After contest the said petition was allowed and the

defendant was directed to handover possession of the premises to the plaintiff. As he did not comply with the said order the plaintiff filed execution petition in Ex.72/2021 on the file of the said court for enforcing the said order and to take possession of the premises. The defendant, after dragging on the proceedings for several months, handed over the vacant possession to the plaintiff. She has produced the relevant documents with regard to these proceedings and they are already marked as exhibits in the case. It is further contended that, the defendant's malafide intention to only to harass the plaintiff as much as possible. He has not paid the rents for the last more than 10 years, yet he is raising all sorts of untenable objections to delay and drag on the proceedings. She had represented the plaintiff as her PA holder in all the previous proceeding. The defendant is quite aware of this yet he is trying to raise untenable objection to the power of attorney produced by her in the case. This clearly shows his malafide intention on his part to harass the plaintiff she is not a stranger to case or the premises. The plaintiff is none other than her own aunt. In fact she is also one of the co-owner of the premises along with the plaintiff and others. This is quit evident from the suit in O.S.No.10878/2012 in which she arrayed as a party, which is referred to in the order passed in the eviction case.

3. It is further stated that, though the question of the effect of the suit O.S.No.1087/12 has already been considered and decided in HRC No.75/13, the defendant has cross-examined her in the above case, on this point though it was irrelevant demonstrating his malafide intention to harass the plaintiff and applicant. The plaintiff instructed her to file the above suit and also O.S.No/542/21 on the file of the III Addl. Civil Judge, Mysuru for the recovery of the amounts due from the defendant for different periods on the basis of the power of attorney which is marked as Ex.P.9 in the case. The recovery of the rent due from the defendant is also covered under the said power of attorney at Ex.P.9. Today she is filing another power of attorney given by the plaintiff ratifying her acts of filing the above suit and the said suit O.S.No.542/21 authorizing her to prosecute the case. She is also representing the plaintiff herein in O.S.No.1087/12 who is the first defendant there. Hence, prays to allow the application.

4. On the other hand, defendant filed objection contending that, the application filed by the plaintiff under Order III Rule 2 R/w Section 151 of CPC is not maintainable either in law or on facts. Plaintiff has filed the above suit not on her individual capacity but she has filed the above suit

represented by her GPA holder Smt. Gayathri devi. Along with the suit, plaintiff has not furnished the said power of attorney. Hence, suit filed by the plaintiff is not maintainable in view of non-production of General power of attorney along with the suit. Hence, the defendants has filed an application under order VII rule 11 of CPC to reject the plaint on the ground that, the suit filed by the plaintiff is not maintainable. The said application is pending for adjudication.

5. During the time of trial, she has produced a GPA executed by her in favour of Smt.Gayathri Devi and the said document is marked as an exhibit. No where in the said document, Smt. Gayathri Devi has been authorized to file the above suit. To patch up the defence taken up by the defendant and to patch up the cross-examination portion of PW.1, plaintiff has filed an application under Order III Rule 2 of CPC praying the above said court to permit her to represent the plaintiff as her GPA which is not maintainable in the eye of law. The said document is concocted for the purpose of the case.

6. Defendant has filed this written statement urging that the plaintiff has no right to file the suit on the ground that as on the date of filing the suit plaintiff has not authorizing Smt.Gaythri Devi to file the suit. The averments

made in the written statement may be read along with the averments contained herein for the disposal of the application which is under consideration. The plaintiff has not stepped into witness box to depose her case. Name Smt. Gayathridevi has given her evidence without furnishing GPA executed by the plaintiff. Even at the time of filing the suit plaintiff has not furnished the General power of attorney but the plaintiff it has been stated by Smt. Lalithamma who is the plaintiff represented by her GPA holder Smt. Gayathri Devi. The said document is not produced along with the plaintiff. Hence presentation of plaintiff by the GPA holder before the above said court is not accordance with law and prays to dismiss the application.

7. Heard counsel for plaintiff. Counsel for the defendant remained absent inspite of sufficient opportunity. Hence, the arguments of the defendant/applicant taken as nil. Perused the materials on record.

8. Counsel for the plaintiff produced the following rulings;

1. *2017(2) KCCR 1352 between Amit Roy Vs Jyothendra Sinji*
2. *2014 (4) KCCR 3463 between Sajida Banu Vs Halema Banu and others*

3. 1067 (2) Mys.L.J.82 between M.Madhava vs the Jayalakshmi Bank Ltd and another

4. 1971 AIR 761, 1971 SCR (1) 38, AIR 1971 SUPREME COURT 761 between Jugraj Singh and Anr Vs Jaswath Singh and others.

9. The points that would arise for my consideration are as follows;

1. Whether the applicant has assigned sufficient reasons to allow the application?

2. What order ?

10. My findings to the above points are as under:

Point No.1 : in the ***"Affirmative"***

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

REASONS

11. The suit is one for recovery of arrears of rent from the defendant. The plaintiff filed an eviction petition and got the possession of the property and the present petition is for the arrears of rent. In the present application the GPA holder of the plaintiff is seeking permission to represent the plaintiff as her PA holder in the above case.

12. The plaintiff relied on the rulings as stated supra, wherein in a decision reported in 2017(2) KCCR 1352 between Amit Roy Vs Jyothendra Sinhji Vikramasinhji, Hon'ble High

Court of Karnataka held that, non filing of power of attorney along with the plaint does not render the suit non-maintainable. Further as per section 196 of Contract Act the Principal can ratify the act of the agent and it will have the same effect as if they had been performed by its authority.

13. The plaintiff produced the Special power of attorney along with a plaint and later General Power of attorney along with the present application.

14. In a rulings passed by the Apex court in a case between Jugraj Singh and Anr. Vs Jaswanth Singh and Ors on 16.03.1970 reported in AIR 1971 S C 761 it is held that, the second power of attorney was a valid document and it authorized S to execute the document as well as to present it for registration. This being a document ratifying a former inconclusive act it related back to the time when the first document was made and cured the illegality in presentation for registration which has taken place.

15. Therefore it is clear from the above decision that, the non presentation of the General Power of attorney along with the plaint is not a fatal and it will not make the suit non maintainable. Further it is also clear that the second General Power of attorney can be executed

and it is the valid document to ratify the earlier acts done by the holder of the power of attorney.

16. In the present case the Power of attorney of the plaintiff produced Special Power of Attorney along with the plaint which is marked at Ex.P.9 and now producing the General Power of Attorney ratifying the earlier acts along with this application. Therefore, the application is maintainable and there is no merits in the defence of the defendant. The applicant made out good grounds. Hence, I proceed to pass the following;

ORDER

Application filed by plaintiff Under Order III rule 2 R/w 151 of C.P.C is hereby allowed.

No order as to cost.

The General Power of Attorney produced by the plaintiff taken on record. For further evidence of plaintiff by 29.08.2025.

**Judge,
Court of Addl. S.C., & MACT
Mysuru**