

Order on I. A.No.VII

The application I.A.No.VII is filed by the SPA holder of defendant No.1 U/O 3 Rule 2(a) of CPC to permit him to give evidence on behalf of defendant No.1.

2. The application is supported by the affidavit of the SPA holder of the defendant No.1 and it is sworn that the defendant No.1 has gone to USA to settle the issue of his daughter who expired recently. It is further stated that the defendant No.1 has appointed the applicant as his power of attorney holder to give evidence on his behalf. It is further stated that if the application is not allowed the defendant No.1 will be put to greater loss and hardship. Hence prayed to allow the application.

3. The counsel for plaintiffs has filed objection to the application and it is stated that the power of attorney holder has created a false story and the defendant No.1 is avoiding to give evidence before the court and if he appears before the court, truth will come out. Even though the defendant No.1 get opportunity to come back from the USA, in order to avoid the extractions of the truth before the court, he gave the power of attorney to the applicant. It is also stated that the power of attorney holder is aged about 26 years and he is not aware about the facts involved in the present case. Hence prayed to dismiss the application.

4. Herd the arguments of counsel for both parities.

5. The applicant who being the SPA holder of the defendant No.1 has filed present application to permit him to

lead evidence on behalf of defendant No.1 as his power of attorney holder. On perusal of the order sheet, earlier defendant No.1 got examined as DW-1. Subsequently now the present application has filed application by stating that the defendant No.1 has left to USA in order to settle the problem due to the death of the daughter. The applicant along with the application has produced SPA executed by the defendant No.1 in favour of the applicant. On perusal of the said power of attorney, it is stated that the daughter defendant No.1 was expired at USA and in order to resolve all the issues arisen after her death and in order to look after her family there is need of six months stay in said place. It is the objection of the plaintiffs that the power of attorney holder is aged about 26 years and he is not aware about the facts relating to present case and defendant No.1 is avoiding to appear before the court in order to hide the truth before the court. The reasons stated in the affidavit as well as SPA executed by the defendant No.1, the plaintiffs have not disputed that the daughter of defendant No.1 is dead. By considering the reasons stated in the affidavit as well as the SPA, it is necessary to permit the applicant to adduce evidence on behalf of defendant No.1. If the power of attorney holder is not having knowledge about the facts of the present case, the same can be questioned during his cross-examination. The Hon'ble Supreme Court in **Suraj Lamp & Industries (P) Ltd., Vs State of Haryana and another - (2012) 1 SCC 656**, it has been held that a party can prosecute the suit through his power of attorney holder. By considering principle laid down in the aforesaid ruling and also by considering the reasons assigned by the applicant, it is necessary to permit the SPA holder to

conduct the present case on behalf of the defendant No.1. Hence for the said reasons this court proceeds to pass the following:

ORDER

The application I.A.No.VII filed by the applicant U/O III Rule 2 of CPC is hereby allowed.

The applicant is hereby permitted to prosecute the case on behalf of the defendant No.1 as his SPA holder/recognized agent.

No order as to cost.

For D/E

Call on: 09.01.2025.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 17th day of December 2024)

**(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote**