

Orders on I.A. filed under Order III Rule 2 R/w Sec.151 of
C.P.C.,

The applicant/GPA holder of the proposed defendant filed the present application to permit him to file Vakalath and conduct the case as the proposed defendant is residing out of country.

As per the affidavit of the applicant annexed to the application, he is the father of the proposed defendant and the proposed defendant is residing out of country and he is unable to be present and part of the proceeding of the suit. Hence, he has executed a general power of attorney in favour of the applicant to conduct the proceedings on his behalf. Hence, the application.

The opponent/plaintiff filed the statement of objections and submitted that, the proposed defendant filed the application to drag on the proceedings and harass the plaintiff by one or the other way. That, the law is clear that, GPA holder cannot depose on behalf of principal, unless the GPA holder has personal knowledge of the facts and circumstances of the case to depose the same. If the Court permits the GPA holder to prosecute the case truth will not come from the mouth of the GPA holder. Hence, the opponent prayed for dismissal of the application with exemplary costs.

Heard.

The applicant has produced General Power of Attorney Deed executed by the proposed defendant in his favour to proceed with the case as the proposed defendant is not residing in India.

As per Order III Rule 1 of CPC., appearance, etc., may be in person, by recognised agent or by pleader. As per the decision

rendered by the Hon'ble High Court of Karnataka in *ILR 2015 KAR 635, between Sajida Banu V/s Halema Banu and Others*,

Order III Rule 1 of CPC., Enables a party to appear, file application or act in a Court personally without engaging a Counsel and all such acts can also be performed by a recognized agent if the party executes a Power of Attorney in favour of such agent; this can also be done by a pleader who is duly authorized. The only exception is, 'if under any law, the party has to appear in person then neither the pleader nor the Power of Attorney Holder can appear.

Order III Rule 2 of CPC., provides that, Persons holding Power of Attorney under which they are duly authorized, to make such appearances, applications and act as recognized agents.

Further in the said decision, it is held that, it is not obligatory on the part of the party to a litigation to appear in person, unless the law so requires. The party could prosecute or defend a legal proceedings through a Power of Attorney Holder or even a Pleader. Therefore, when the statute confers such a power on a party, it has to be honoured. The question of Court granting permission to a party to prosecute the matter through a Power of Attorney Holder or a Pleader would not arise. However, the Court cannot prevent a party from prosecuting the litigation or defending it through a Power of Attorney Holder or a Pleader. Under the above circumstances, the application filed for such permission is wholly misconceived.

In this case, the plaintiff has filed IA under Order I Rule 10(2) of CPC., to bring the proposed defendant on record. After service of notice, the present applicant filed Vakalath on behalf of the proposed

defendant on the basis of GPA said to be executed by the proposed defendant to proceed with the case. Therefore, as per the above said decision, such an application is not necessary seeking permission of the Court to proceed with the case and the applicant being the GPA holder with out making such an application can proceed with the case. Therefore, as per the deicison cited above, the present application is not entertained. Hence, the following:

ORDER

I.A filed under Order III Rule 2 R/w
Sec.151 of C.P.C., is rejected.

**Addl. Senior Civil Judge & JMFC.,
Ramanagara.**