

Orders on I.A., dated 26.02.2018

I.A. dated 26-02-2018 is filed by the Applicant under Order 3 Rule 2 r/w Sec.151 of C.P.C. to permit him to adduce evidence on behalf of plaintiff. It is accompanied by affidavit, Power of Attorney Certificate produced. Objection is filed by Defendants.

2. In the affidavit accompanying the application, the applicant states that the plaintiff who is his mother has undergone surgery on left eye and the doctor has advised her to take rest. Hence, she has given him power of attorney to proceed with the case on her behalf. Hence, prays for allowing the application.

In the objection, apart from usual denial of the averments mentioned in the affidavit accompanying the application, the defendant states that no documents is filed to show the plaintiff is unable to appear before the court. Further state, the plaintiffs underwent surgery in 2017. Hence, she is hale and

healthy and could depose evidence before the court.

Hence, prays for dismissal of the application.

3. The following points arise for my determination:

(1) *Whether the application filed under Order 3 Rule 2(a) of CPC is to be allowed ?*

(2) *What order ?*

4. Heard the counsel for the plaintiff and the defendant.

5. 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

6. Point No.1 : Perused the affidavit and the Power of Attorney copy and case record. The suit is filed for Declaration and consequential injunction. The plaintiff intends to adduce evidence through the GPA Holder **who is none other than her son**. By considering the grounds mentioned in the affidavit accompanying the

application, this court views that the applicant could be permitted to adduce evidence on behalf of the plaintiff.

7. Further this Court would like to rely on decision of **Apex Court in AIR 2005 SC 439, in Janki Vashdeo Bhojwani and another V/s Indusind Bank Ltd and others.**, wherein, the apex court has held that, *“If the power of attorney has rendered some acts in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have personal Knowledge”*. This court would also rely on decision of High Court of Karnataka in **2014(4) KCCR 3463 in Sajida Banu V/s Halema Banu and others**, wherein, it has been held that, *“Held, it is not obligatory on the part of the party to a litigation to appear in person, unless the law so required. 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.”

In the above cited cases it has been held that, the parties are at liberty to adduce evidence through power of attorney. However, it is held that the power of attorney cannot depose for the principal for the acts done by the principal and not by him. Similarly he cannot depose in respect of matter which only the principal have personal knowledge. Based on the principal and limitation laid down in above said citations, this court views that the plaintiff could be permitted to adduce evidence through Power of attorney. With this observation, Point No.1 is answered in the affirmative.

8. Point No.2: Based on findings in point No.1, proceed to pass the following:

ORDER

I.A. dated 26.02.2018 filed by the applicant under Order 3 Rule 2 r/w Sec.151 of C.P.C. is hereby allowed with cost of Rs.500/-.

The plaintiff is permitted to adduce evidence through GPA Holder subject to limitation laid down in Janki Vashdeo Bhojwani cited above.

The chief examination affidavit of plaintiff i.e., PW1 is hereby discarded.

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

Orders on I.A., dated 26.02.2018

I.A. dated 26-02-2018 is filed by the Defendant under Order 6 Rule 17 R/w sec 151 of C.P.C. seeking permission for amendment of written statement. It is accompanied by affidavit. Objection is filed by Plaintiff.

Heard the counsels and perused the records. The defendant under the present application seeks amendment of written statement wherein, he intend to insert additional paragraphs in the written statement. This court views that the proposed amendment is explanatory in nature. Hence, the proposed amendment could be allowed. Further, the evidence not having been completed, the proposed amendment sought by the defendant could be allowed in order to effectively adjudicate the matter in controversy between the parties. With this observation, proceed to pass the following:

ORDER

I.A. dated 26.02.2018 filed by
the defendant under Order 6 Rule

17 r/w Sec.151 of C.P.C. is hereby
allowed with cost of Rs.500/-.

The defendant is permitted to
carryout amendment of written
statement.

For amendment of written
statement and amended written
statement by.

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