

MHST130009482023	RCS 295/2023 Kundalika Yadav Vs. Shivaji Patil
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ORDER BELOW EXH 48.

The present application has been filed by the defendant seeking a direction that the person representing the plaintiff, namely Shri Dashrath Dhondiba Jadhav, who claims to be acting as a Power of Attorney holder and pleader, be restrained from conducting the proceedings on behalf of the plaintiff on the ground that he does not possess a law degree and is not enrolled with the Bar Council of Maharashtra and Goa or the Bar Council of India, and therefore is not legally entitled to appear, plead or act as an advocate or pleader in the present suit.

02. The defendant has contended that the plaintiff has instituted the present suit for declaration and possession against the defendant and that the defendant has already appeared and filed a written statement denying the claim and the relief sought by the plaintiff. It is further contended that though the plaintiff has appointed Shri Dashrath Dhondiba Jadhav by filing a vakalatnama at Exhibit 2 and has shown him as a person authorised to conduct the proceedings, no valid power of attorney authorising him to act in such capacity has been produced on record. The defendant has further contended that the said Shri Dashrath Dhondiba Jadhav is not a law graduate and does not hold a certificate of enrolment issued by the Bar Council of Maharashtra and Goa or the Bar Council of India. According to the defendant, in view of the

provisions of the Advocates Act, 1961, particularly Sections 2, 29, 30, 32 and 33, a person who is not enrolled as an advocate is prohibited from practising law and from appearing and pleading before the Court as a legal practitioner. It is also contended that the definition of “pleader” under Section 2(15) of the Code of Civil Procedure requires entitlement under law to appear and plead, and that the said person does not fulfil such statutory requirements. It is therefore submitted that permitting such an unauthorised person to conduct proceedings amounts to a violation of statutory provisions and constitutes a serious illegality. On these grounds, the defendant has prayed that appropriate orders be passed restraining the said person from representing the plaintiff in the present proceedings.

03. Per contra, the plaintiff has opposed the said application and has contended that under Order III Rules 1, 2 and 4 of the Code of Civil Procedure, a party is entitled to appear and act either personally or through a recognised agent or through a pleader. It is contended that a person holding a valid power of attorney is a recognised agent under Order III Rule 2 and therefore is entitled to appear, act and conduct proceedings on behalf of the principal. The plaintiff has relied upon several judicial precedents, including decisions of the Hon’ble Supreme Court and various High Courts, to submit that a Power of Attorney holder is entitled to act and plead on behalf of the party. The plaintiff has particularly relied upon the decisions in *A.C. Narayanan vs State of Maharashtra (2013)*, *S. Ramachandra Rao vs Nagabhushana Rao (2022)*, *Janki Vashdeo Bhojwani vs Indusind Bank Ltd. (2004)*,

Shankar Finance vs State of Andhra Pradesh (2008), and other High Court judgments including D. Sornam vs State of Madras (1968), Shambhu Dutt Shastri vs State of Rajasthan (1985), Ram Prasad vs Hari Narain (1997) and Pradeep Mohanbay vs Minguel Carlos Dias (1999). The plaintiff has further relied upon the maxim actus *curiae neminem gravabit* as reiterated by the Hon'ble Supreme Court in *Prem Aggarwal vs Mohan Singh (2025)* to contend that no party should suffer due to any procedural lapse attributable to the Court and that the objection raised by the defendant is hyper-technical and intended only to delay the proceedings. On these grounds, the plaintiff has prayed for rejection of the defendant's application.

04. This Court has carefully considered the rival submissions, the statutory provisions and the judicial precedents relied upon by both sides.

05. At the outset, it is necessary to examine the scope and intent of Order III Rules 1, 2 and 4 of the Code of Civil Procedure. Order III Rule 1 provides that any appearance, application, or act in any Court may be made by the party in person, or by his recognised agent, or by a pleader, except where otherwise expressly provided by law. Rule 2 defines recognised agents and includes persons holding powers of attorney authorising them to make and do such appearances, applications and acts on behalf of the parties. Rule 4 lays down the procedure for the appointment of a pleader and mandates that no pleader shall act unless he has been appointed by a document in writing.

06. A conjoint reading of these provisions shows that the Code recognises three distinct categories: (i) appearance in person by the party, (ii) appearance and acts by recognised agents such as power of attorney holders, and (iii) appearance and pleading by pleaders duly appointed. The scope of a recognised agent under Rule 2 primarily relates to “acts” and “applications” which are procedural in nature. The term “pleader” under Section 2(15) of the Code refers to a person entitled to appear and plead for another in Court and includes an advocate, vakil and attorney of a High Court. Therefore, entitlement to plead is not automatic and must be derived from statutory recognition and professional enrolment where applicable.

07. At this stage, it is pertinent to note that Section 29 of the Advocates Act declares that only advocates enrolled under the Act are entitled to practice the profession of law. Section 33 further mandates that no person shall be entitled to practice in any Court unless he is enrolled as an advocate under the Act. Section 32 provides a limited discretionary power to the Court to permit any person, not enrolled as an advocate, to appear before it in a particular case, subject to conditions and reasons to be recorded. Therefore, the statutory scheme clearly indicates that, as a general rule, only enrolled advocates are entitled to appear and plead, and any exception can be made only by a specific order of the Court under Section 32.

08. In this background, the judgments relied upon by the plaintiff are required to be examined in their proper context.

09. In *Janki Vashdeo Bhojwani v. Indusind Bank Ltd. (2004)*, the Hon'ble Supreme Court primarily considered the extent to which a Power of Attorney holder can depose and give evidence on behalf of the principal. The Court held that a Power of Attorney holder may depose only in respect of acts performed by him or facts within his personal knowledge and cannot depose regarding matters which are exclusively within the knowledge of the principal. The decision principally concerns evidentiary competence and the scope of authority of a Power of Attorney holder. It does not lay down that a non-advocate Power of Attorney holder acquires an unrestricted right to plead and argue before the Court in the same manner as an advocate enrolled under the Advocates Act, 1961.

10. In *Shankar Finance vs State of Andhra Pradesh (2008)*, the Hon'ble Supreme Court held that a Power of Attorney holder can file a complaint and initiate proceedings on behalf of the principal if duly authorised. However, the Court also clarified that such authorisation does not convert the Power of Attorney holder into a legal practitioner and that statutory requirements relating to legal practice remain applicable. Therefore, this decision also does not support the proposition that a non-advocate Power of Attorney holder can act as a pleader as of right.

11. In *A.C. Narayanan vs State of Maharashtra (2013)*, the Hon'ble Supreme Court held that a Power of Attorney holder is competent to file a complaint under Section 138 of the Negotiable Instruments Act and to depose on behalf of the complainant,

provided he has personal knowledge of the transaction. The Court further observed that such a Power of Attorney holder can appear, plead and act on behalf of the party, but cannot become a witness on behalf of the party in respect of matters not within his knowledge. The context of this judgment was specific to criminal complaints under the Negotiable Instruments Act and the permissibility of representation by authorised agents. This judgment does not dilute the mandatory requirement of enrollment under the Advocates Act for practising law as a profession before the Courts.

12. In *S. Ramachandra Rao vs Nagabhushana Rao (2022)*, the Hon'ble Supreme Court reiterated that a General Power of Attorney holder can participate in trial proceedings and assist the Court, subject to the limitations laid down in earlier judgments. The emphasis in this decision is on participation and assistance in proceedings and not on the conferment of an absolute right to practice law or to function as a pleader in substitution of a duly enrolled advocate.

13. The High Court judgments relied upon by the plaintiff, namely *D. Sornam vs State of Madras (1968)*, *Shambhu Dutt Shastri vs State of Rajasthan (1985)*, *Ram Prasad vs Hari Narain (1997)* and *Pradeep Mohanbay vs Minguel Carlos Dias (1999)*, also primarily deal with the permissibility of representation through Power of Attorney holders and the procedural aspects of authorisation. None of these judgments can be read to override the express provisions of the Advocates Act, which restrict the right of

practice before Courts to enrolled advocates. These decisions recognise the role of Power of Attorney holders as recognised agents for limited purposes but do not confer upon them the professional status of pleaders under Section 2(15) of the Code or advocates under the Advocates Act.

14. As regards the reliance placed by the plaintiff on the principle of actus curiae *neminem gravabit* as reiterated in *Prem Aggarwal vs Mohan Singh (2025)*, the said principle relates to situations where a party suffers prejudice due to an act or mistake of the Court. In the present case, the issue pertains to the statutory eligibility and competence of a person to represent a party as a pleader. This is not a case where any procedural error or inadvertence on the part of the Court has caused prejudice to the plaintiff. Therefore, the said principle has no direct application to the present controversy.

15. It is also pertinent to note that Section 32 of the Advocates Act empowers the Court, in its discretion, to permit any person not enrolled as an advocate to appear before it in a particular case. However, such permission is not automatic and must be sought specifically and granted by a reasoned order. In the present case, no such application under Section 32 has been placed on record seeking special permission for the said Power of Attorney holder to appear and plead. In the absence of such permission, the statutory bar under Section 33 of the Advocates Act continues to operate.

16. From the above discussion, it emerges that Order III of the Code of Civil Procedure permits a party to appear and act through a recognised agent duly authorised by law. However, the provisions of Order III cannot be construed as conferring upon such recognised agent an independent right to practise law, address arguments, examine or cross-examine witnesses, or otherwise function as a pleader before the Court as a matter of right. The right to practise the profession of law and to plead before Courts is governed by the Advocates Act, 1961. Therefore, unless a person is enrolled as an advocate or is specifically permitted by the Court under Section 32 of the Advocates Act, he cannot claim the status of a pleader or legal practitioner merely by virtue of holding a Power of Attorney.

17. In the present case, the defendant has specifically contended that the person representing the plaintiff does not possess a law degree and is not enrolled with the Bar Council. The plaintiff has not produced any material to show that the said person is enrolled as an advocate or has been granted special permission by this Court under Section 32 of the Advocates Act. Therefore, permitting such a person to continue to act as a pleader would be contrary to the statutory mandate.

18. At the same time, it is clarified that the plaintiff is not precluded from acting through a duly authorised Power of Attorney holder for limited procedural acts as recognised under Order III Rule 2, such as filing applications, receiving notices, and assisting in the conduct of the case, provided such acts do not amount to

practising law or pleading as an advocate. The plaintiff is also at liberty to engage a duly enrolled advocate to represent him in the present proceedings.

19. In view of the above reasons and after considering the statutory provisions and binding precedents in their strict legal sense, this Court finds that the defendant's application deserves to be allowed to the extent indicated. Hence, the following order is passed:

ORDER

1. The application at Exhibit 48 is partly allowed.
2. Shri Dashrath Dhondiba Jadhav, not being an enrolled advocate under the Advocates Act, 1961 and not having obtained permission under Section 32 thereof, shall not be entitled to address the Court, examine or cross-examine witnesses, or argue the matter on behalf of the plaintiff. However, if duly authorised by a valid power of attorney, he may perform such ministerial and procedural acts as are permissible to a recognised agent under Order III Rule 2 CPC.
3. The plaintiff shall be at liberty to appear in person, engage an advocate, or seek appropriate permission under Section 32 of the Advocates Act.

Date:- 09/06/2026

(Rajesh M. Lolge)
Civil Judge Jr. Division, Patan