

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.603 OF 2013**

Dr. Govindaraja Venkatesh Iyengar ... Plaintiff
versus
A.R.Sampathkumar and Ors. ... Defendants

**WITH
CHAMBER SUMMONS NO.498 OF 2018
IN
SUIT NO.603 OF 2013
WITH
TESTAMENTARY SUIT NO.42 OF 2012
IN
TESTAMENTARY PETITION NO.64 OF 2011**

Mr. A. Joshi i/by M/s. Mulla and Mulla and Craigue Blunt and Caroe, for Plaintiff.
Mr. Shyam Mehta, Senior Advocate, for Defendant No.1 to 5.
Mr. Ajay Fernandes i/by Mr. R. Peerbhoy, for Defendant No.6.

CORAM: S.J. KATHAWALLA, J.

DATE: 9th JULY, 2018

P.C.:

1. On 3rd July, 2018 this Court passed the following order :

“I have perused the office report submitted by the Committee comprising of Mr. A.N. Mare, Registrar (Judicial-I) and Mr. V.R. Kachare, Registrar (Judicial-II) stating that : “It appears that, the applicant intends to appear as constituted attorney of his father Shri. A.R. Sampathkumar. The Committee has no power to opine whether the applicant can appear as Constituted Attorney for his father or not”.

2. *Mr.A.R. Sampathkumar has taken out a Chamber Summons No.498 of 2018 seeking certain reliefs. The same is sought to be argued by his son on the strength of his Power of Attorney. Advocate appearing for the Plaintiff has relied on the decision of Supreme Court*

in the case of Goa Antibiotics and Pharmaceuticals Limited vs. R.K. Chawla and another, reported in (2011)15 SCC 449, paragraphs 3 and 4 of which are reproduced hereunder :-

“3. A perusal of the above provision shows that only a person who is enrolled as an advocate can practise in a court, except where otherwise provided by law. This is also evident from Section 29 of the Act. A natural person can, of course, appear in person and argue his own case personally but he cannot give a power of attorney to anyone other than a person who is enrolled as an advocate to appear on his behalf. To hold otherwise would be to defeat the provisions of the Advocates Act.

4. Section 32 of the Act, however, vests discretion in the Court, authority or person to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case. Section 32 of the Act is not the right of a person (other than an enrolled advocate) to appear and argue before the court but it is the discretion conferred by the Act on the court to permit anyone to appear in a particular case even though he is not enrolled as an advocate.”

3. Keeping in view, the manner in which the matter has been argued at the initial stage, I am not inclined to exercise the discretion and I am of the view that the Defendants should appoint an Advocate to represent their case before this Court. Since the son and Constituted Attorney of Defendant No.1 states that Defendant No.1 is 99 years old and is also not in any position to pay the fees of an Advocate, and has stated that he has no objection if the Court appoints an Advocate to represent the Defendants, I appoint Mr. Shyam Mehta, Senior Advocate to represent the Defendants. Stand over to 9th July, 2018.”

2. Today, Mr. Shyam Mehta, learned Senior Advocate appearing on behalf of Defendant Nos.1 to 5 states that he has informed Defendant Nos.2 and 3 who are personally present in the Court that :

(i) He has appeared for Defendant No.6 in the past, although not in the present matter;

(ii) He knows Mr. E.C.John, the Secretary of Defendant No.6 for about ten years and that he is willing to appear in this matter only if no allegations are made against Mr. E.C.John;

(iii) Mr. Ajai Fernandes, the learned Counsel appearing on behalf of Defendant No.6 is his junior.

3. Defendant No.2 has represented that he is authorized to give instructions on behalf of Defendant Nos.1, 4 and 5. Defendant Nos.2 and 3 have stated that Defendant Nos.1 to 5 have no objection to the above disclosures made by Mr. Shyam Mehta, Senior Advocate and they want Mr. Mehta to represent them in the above matter. The statement is accepted.

4. Place Testamentary Suit NO.42 of 2012 for final hearing on 6th August, 2018 after the ad-interim matters.

(S.J.KATHAWALLA, J.)