

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
IA 1/2009
in
CIVIL APPEAL NO. 6701 OF 2005

UDAY SHANKAR TRIYAR Appellant (s)

VERSUS

RAM KALEWAR PRASAD SINGH & ANR. Respondent(s)

(With appln(s) for directions)

Date: 29/11/2010 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s) Mr. Sunil Kumar, Sr. Adv.
Mr. Himanshu Shekhar, Adv.
Ms. Anita Kanungo, Adv.
Mrs. Sarla Chandra, Adv.

For Respondent(s) Mr. K.V.Mohan, Adv.

UPON hearing counsel the Court made the following
O R D E R

I.A.1/2009 is disposed of in terms of the signed
order.

(O.P. Sharma) (Mithlesh Gupta)
Court Master Court Master
(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA 1/2009

IN

CIVIL APPEAL NO.6701 OF 2005

Uday Shankar Triyar Appellant

Vs.

Ram Kalewar Prasad Singh & Anr. Respondents

[Applicant : Supreme court Advocates-on-Record Association]

O R D E R

R.V.RAVEENDRAN, J.

This Court while disposing of the matter (decision reported in 2006 (1) SCC 75) had expressed concern over the manner in which defective vakalatnamas were being routinely filed in courts, and had referred to the 'failure to identify the person executing the vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the vakalatnama', as one of the usual defects found in vakalatnamas. This Court observed that the Registries do not usually verify the vakalatnamas with the care and caution they deserve and that such failure leads to avoidable complications and had emphasized the need for proper verification of the vakalatnamas filed in that court.

In pursuance of the said decision, the Supreme Court Registry took steps to ensure that vakalatnamas were properly filled and duly made. One of the measures taken by the Supreme Court Registry in that behalf is to insist upon the signature of the executant of the vakalatnama being identified by the Advocate-on-Record in whose favour it is executed.

The Supreme Court Advocates-on-Record Association submitted a representation dated 24.3.2009 to the Hon'ble Chief Justice of India, seeking a direction to the Registry not to insist upon the identification of executants of vakalatnamas by Advocates-on-Record. As the said requirement was in pursuance of a decision of this court, the said representation has been treated as an application for clarification and placed on the judicial side for consideration.

It is submitted on behalf of the AOR Association

that most of the cases filed before the Supreme Court

relate to outstation litigants and very few vakalatnamas are executed in their presence at Delhi. It is submitted that vakalatnamas are executed either in the presence of a local

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counsel or a notary public. It is submitted that any vakalatnama received by an Advocate-on-Record will contain an endorsement by a local counsel or a Notary Public that the vakalatnama is executed in his presence and that amounts to due identification of the executant; and therefore there is no need for the Advocate-on-Record to again identify the executants of the vakalatnamas.

The decision of this Court in Uday Shankar Triyar does not require that all vakalatnamas, even if they are not executed in the presence of the advocate in whose favour it is granted, should contain an identification of the executant by such Advocate. Where the vakalatnama is executed in the presence of a Notary Public, the executant is identified by a person known to the Notary Public. Most of the vakalatnamas are however executed before an advocate and the advocate in whose presence the vakalatnama is executed either identifies the executant or certifies that it is executed in his presence. Where the vakalatnama is so attested by a Notary Public or a local counsel, there is no need for the Advocate-on-Record to identify the executant. Infact the question of 'identification' of the executant of the vakalatnama by the Advocate-on-Record would arise only when the vakalatanama is executed in his presence. Where the Advocate-on-record does not know the executant personally,

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and when it is not executed in his presence, he cannot obviously identify the executant. Therefore where the vakalatnama had been executed in the presence of a notary or an advocate and contains their endorsement, it is sufficient for the Advocate-on-Record to merely certify that he has

satisfied himself about the due execution of the vakalatnama.

If the vakalatnama is executed in the presence of the Advocate-on-Record, the Advocate-on-Record may identify the executant or certify that it is executed in his presence. In Uday Shankar Triyar, this court only observed that a vakalatnama filed into court, where the signature of the executant is not identified/attested by any counsel or Notary Public, and which does not contain a certification by the Advocate accepting the vakalatnama that he has satisfied himself about its due execution, will be considered to be defective, as there would be no authenticity about the execution of the vakalatnama.

Therefore, we issue the following clarifications:

(a) The decision in Uday Shankar Triyar does not require the Advocate-on-Record to identify the person executing the vakalatnama, if a local counsel or Notary Public has already identified the executant of the vakalatnama by certifying

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that it was executed in his presence.

(b) Where the vakalatnama is executed in the presence of the Advocate-on-Record, he should certify that it was executed in his presence.

(c) Where the Advocate-on-Record merely accepts the vakalatanama which is already duly executed in the presence of a Notary or an advocate, he is only required to make an endorsement that he has satisfied himself about the due execution of the vakalatnama.

.....J.

(R V Raveendran)

New Delhi;
November 29, 2010.

.....J.
(Dalveer Bhandari)