

**C.M.P.Nos.65 and 75 of 2020  
in C.M.A.No.2863 of 2019**

**S.VAIDYANATHAN, J.**

C.M.P.No.65 of 2020 has been filed, seeking to grant leave to the petitioner to appear, represent and argue on behalf of the 1<sup>st</sup> respondent in the CMA. In C.M.P.No.75 of 2010, the petitioner has sought for amending the cause title so as to include that the 1<sup>st</sup> respondent, namely, Mr.Uma Shankar Sivasubramanian is represented through his Power of Attorney Na.Vijayashankar in the CMA.

2. Mr.Na.Vijayashankar, who is present before this Court has stated that a Special Power of Attorney has been executed by the 1<sup>st</sup> respondent in the CMA, who is a Non Resident Indian, residing in Abu Dhabi and he has authorized him by way of notary dated 18.08.2019 to represent him in all matters before any Court. He has further stated that Sections 29 r/w 32 of the Advocates Act, 1961 empower any person to represent a case after obtaining the leave of the Court and ultimately, the power is vested with the Court to permit appearance in particular cases. Sections 29 and 32 of the Advocates Act are extracted hereunder:

“29. Advocates to be the only recognised class of persons entitled to practise law.—Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

32. Power of Court to permit appearances in particular cases.—Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.”

3. Mr.Na.Vijayashankar, in order to strengthen his argument that a Power of Attorney Holder is entitled to represent his Principal, has relied upon the following judgments:

i) *P.Punnaiah and Others -vs- Jeypore Sugar Co. Ltd. and Others,*  
reported in *1994 AIR 2258;*

“9. We are unable to agree with the said reasoning. Section 399 or Sub-section (3) thereof does not either expressly or by necessary implication indicate that the consent to be accorded thereunder should be given by the member personally. As we have emphasised hereinabove, the first appellant could have filed, or joined as an applicant in an application under Sections 397/398 in the name of and for and on behalf of Smt. Rajeshwari as her G.P.A. holder. No question of 'consent' would have and could have arisen in such a case. If so, it is un-understandable as to why and how he could not have given consent on behalf of Smt. Rajeshwari, the member, under Section 399(3). No rule or decision could be brought to our notice saying that the consent under Section 399(3) cannot be given by a G.P.A.-holder (who is empowered by the principal to manage and administer the shares and stocks held by the principal and to take all necessary steps and proceedings in all Courts, Offices and Tribunals in that behalf). In this connection, it is relevant to notice that shares

may also be held by a company or other corporate body. Question may arise what does one mean by a personal decision by a company or other juristic person. Be that as it may, we see no warrant for holding that Section 399(3) is an exception to the normal rule of agency. The normal rule is that whatever a person can do himself, he can do it through his agent, except certain functions which may be personal in nature or otherwise do not admit of such delegation. The consent contemplated by Section 399(3) falls under the general rule and not under the exception.

10 to 14 .....

17. For the above reasons, the appeal is allowed and the orders of the learned Company Judge and the Division Bench impugned herein are set aside. **The consent given by the first appellant for and on behalf of Smt. V. Rajeshwari, as her G.P.A. holder, is a valid consent within the meaning of Sections 399(3) and, therefore, the preliminary objection to the maintainability of the application filed under Section 397/398 is unsustainable in law. The application may be proceeded with in accordance with law expeditiously, in view of the fact that about fifteen years have been spent on a preliminary objection alone. No orders as to costs.”**

ii) *Surender Raj Jaiswal and Others vs. Vijaya Jaiswal*, reported in

**AIR 2003 AP 317;**

“13. The Apex Court in *Harishankar Rastogi v. Girchari Sharma*, MANU/SC/0093/1978 : 1978CriLJ766 , held that a private person, who is not an Advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold the permission in its discretion. In fact, the Court may even after grant of permission, withdraw it halfway through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of the other circumstances must be

gathered before grant or refusal of permission. In the said case, the Apex Court noticed that the Power of Attorney Holder was a friend of the party and was having mutual confidence and, therefore, he was permitted to appear. In the instant case, the Power of Attorney is no other than the husband of the respondent and the said Power of Attorney Holder sought permission to prosecute the particular case alone and, therefore, the Court below rightly permitted him to prosecute and adduce evidence and the said permission granted by the Court below was not questioned. Only after cross-examination of DW-1, on certain occasions, it was not known why the petitioners thought it fit to file such an application under Section 151 of the Code of Civil Procedure to direct the respondent either to conduct the case herself personally and cross-examine DW-1 or other wise engage an Advocate prohibiting the husband of the 1st respondent from prosecuting the case. **I do not see any bona fides on the part of the petitioners to insist the respondent to prosecute either personally or appoint an Advocate.** The respondent herself no doubt is empowered to prosecute the particular case but due to the relationship of herself with her husband and the acquaintance of the case, she reposed confidence fully in her husband and appointed him as her Power of Attorney to appear on her behalf in a particular case and, therefore, the application filed by the petitioners herein was rightly dismissed by the Court below. The Trial Court granted permission for the Power of Attorney Holder of the respondent and the said Power of Attorney has been helping the Court by appearing for the respondent and there is no remark noticed by the Court below. It is always open for the Court to withdraw or cancel permission if the Power of Attorney Holder is unworthy or reprehensible.”

4. Learned counsel for the Appellant in the CMA has vehemently opposed to the grant of permission to Mr.Na.Vijayashankar to appear in the present case in the capacity as Power of Attorney, as the Power of Attorney executed abroad has got to be adjudicated within 90 days, on payment of

necessary stamp duty as per the relevant provisions of The Indian Stamp Act, 1899. He drew the attention of this Court to Sections 18 and 35 of The Indian Stamp Act, 1899, which read as under:

18. Instruments other than bills and notes executed out of India.—

(1) Every instrument chargeable with duty executed only out of India and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in India.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.”

“35. Instruments not duly stamped inadmissible in evidence, etc.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that—

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or



deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of <sup>66</sup> [the <sup>67</sup> [Government]] or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

5. The judgments cited by Mr.Na.Vijayashankar are irrelevant to the

facts of the present case, as in those cases, the family members sought permission to represent the case in the capacity as Power of Attorney Holder.

As far as the present case is concerned, it is neither a family dispute nor

Mr.Na.Vijayashankar is an Advocate, as the Hon'ble Supreme Court in the case

of *Goa Antibiotics and Pharmaceuticals Limited vs. R.K.Chawla and*

*another*, reported in *(2011) 15 SCC 449* was pleased to observe as follows:

“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 any one to appear in a particular case even though he is not enrolled as an advocate.

5. In this case, an application for permission has been filed by Mr. Vishnu Kerikar who wishes to appear and argue on behalf of the Petitioner-Goa Antibiotics & Pharmaceuticals Ltd. which is a company registered under the Indian Companies Act. We are not inclined to exercise our discretion under Section 32 of the Act and hence we reject the said application. However, we grant the Petitioner four weeks' time to engage a lawyer to appear and argue on behalf of the Petitioner-company.

6. We make it clear that as regards artificial persons like a company registered under the Indian Companies Act, or a registered co-operative society, or a trust, neither the Director of the Company nor member of the Managing Committee or office bearer of the registered society or a trustee has a right to appear and argue on behalf of that entity, since that entity is distinct from its shareholders or office bearers or directors. However, it is the discretion of the court under Section 32 of the Act to permit such person to appear on behalf of that entity.

7. There is a distinction between the right to appear on behalf of someone, which is only given to enrolled lawyers, and the discretion in the Court to permit a non-lawyer to appear before it. Under Sections 29 and 33 of the Act only those persons have a right to appear and argue before the court who are enrolled as an advocate while under Section 32 of the Act, a power is vested in the court to permit, in a particular case, a person other than an advocate to appear before it and argue the case. A power of attorney holder cannot, unless he is an enrolled

lawyer, appear in Court on behalf of anyone, unless permitted by the Court under Section 32 of the Act, though of course he may sign sale deeds, agreements etc. and do other acts on behalf of someone else, unless prohibited by law.

8. Accordingly, the matter is adjourned by four weeks to enable the Petitioner to engage a lawyer to appear and argue on its behalf.”

6. It is an admitted fact that the Power of Attorney executed abroad in favour of Mr.Na.Vijayashankar has not been adjudicated and therefore, it cannot be taken note of for the purpose of allowing him to represent the matter. However, this Court requires his assistance in disposal of the present Civil Miscellaneous Appeal in view of the fact that he is an expert in Cyber Law and therefore, by invoking the provisions of Section 32 of The Advocates Act, 1961, this Court permits him to appear for rendering his assistance so as to give quietus to the issue. Section 32 of The Advocates Act, 1961 also authorizes the Court to take assistance of any person.

7. With the above observation, C.M.P.No.65 of 2020 is disposed of. Since this Court has declined to permit Mr.Na.Vijayashankar to represent the case in the capacity of Power of Attorney on the basis of the Special Power of Attorney executed abroad on 18.08.2019, which was not adjudicated within the stipulated time, the question of amending the cause title does not arise at all.



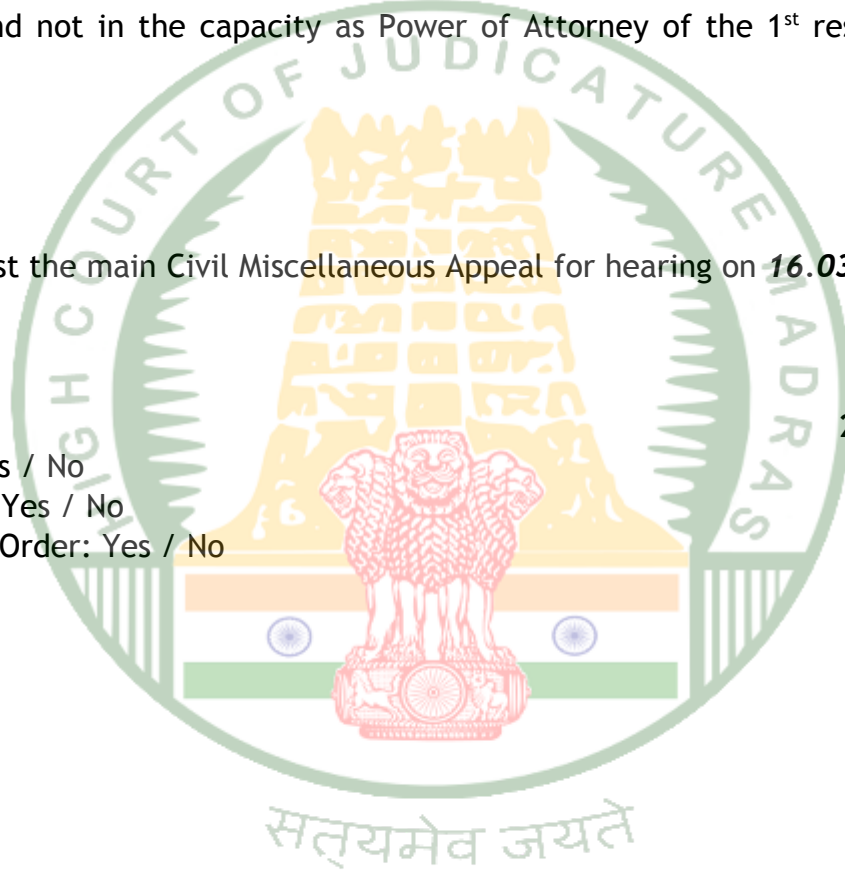
Accordingly, C.M.P.No.75 of 2020 is dismissed.

8. It is reiterated for the sake of brevity that there is no impediment for Mr.Na.Vijayashankar to advance his argument in this case in the capacity of an Expert and not in the capacity as Power of Attorney of the 1<sup>st</sup> respondent in the CMA.

Post the main Civil Miscellaneous Appeal for hearing on **16.03.2020**.

**28.02.2020**

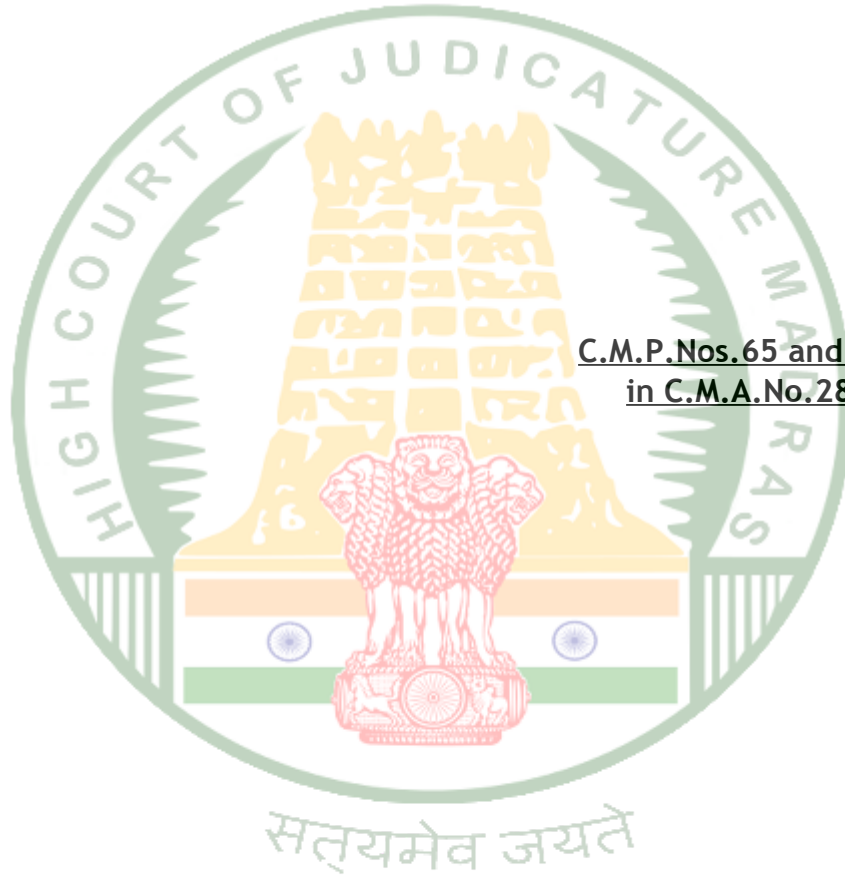
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