

(1974) 10 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Civil Revision No. 11 of 1974, Against interim order passed by Munsiff Magistrate, Jammu in file No. 156 of 1973, D/- 26-3-1974

Bakshi Kesho Nath

APPELLANT

Vs

State of J. and K. and another

RESPONDENT

Date of Decision : 07-10-1974

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 27 Rule 1, Order 3 Rule 2, 4

Citation : AIR 1975 J&K 52 : (1974) JKLR 744

Hon'ble Judges : D.D. Thakur, J

Bench : Single Bench

Advocate : Petitioner in person; R. P. Bakshi, Advocates appearing for the Parties

Judgement

1. In a suit for declaration filed by the petitioner in the court of Munsiff, Jammu, the State and the Commissioner Food and Supplies for the State

of J. and K. were impleaded as defendants. Mr. R. P. Bakshi appeared on behalf of the defendants and filed a vakalatnama which was signed only

by the Deputy Commissioner Food and Supplies, Jammu. A written statement was also filed on behalf of the defendants which too was signed by

the Deputy Commissioner Food and Supplies, Jammu besides Mr. Bakshi, the counsel appearing for the defendants. After this was done the

plaintiff made an application before the court below that Mr. Bakshi was not duly representing the defendants nor was the written statement on

behalf of the defendants signed by a person competent to sign; therefore they may be proceeded against ex parte. The Munsiff considered the

question but refused the prayer of the plaintiff by his order dated 26/3/1974. This revision is directed against this order of the Munsiff. The petitioner

appeared in person, in support of the revision petition and submitted, that, the

order impugned in the revision was irregular. He has reiterated before me the submissions made by him before the trial court.

2. So far as the defendant No. 2 is concerned, the contention of the petitioner in my opinion is very well founded and must invoke acceptance.

There is only one power of attorney on the file in favour of Mr. R. P. Bakshi. The same is signed by the Deputy Commissioner, Food and

Supplies, Jammu. There can be no dispute that Deputy Commissioner Food and Supplies Jammu had no competence to sign a power of attorney

on behalf of the Commissioner. Mr. Bakshi could not therefore put in his appearance for and on behalf of the defendant No. 2. Similar is the

position regarding the written statement. Admittedly the written statement does not bear the signatures of the defendant No. 2. Legally speaking,

therefore, the defendant No. 2 was not duly represented before the court nor can it be said that there was any valid written statement before the

court below on behalf of the defendant No. 2. There is not proof of due service on the defendant No. 2 in the file. If Mr. Bakshi's appearance is

held invalid the defendant No. 2 has to be served before he can be proceeded against ex parte. Mr. Bakshi at this stage undertakes to obtain a

duly signed power of attorney from the defendant No. 2 and produce the same before the court below on 11/11/74. This disposes of the dispute

regarding the defendant No. 2 and to this extent the order of the Munsiff is set aside.

3. The position in regard to the 1st defendant namely the State of Jammu and Kashmir, however, is different and in my opinion, the order of the

Munsiff in so far as it relates to defendant No. 1 cannot be disturbed. In order to appreciate the point at issue, it is necessary to reproduce Rules 1

and 2 of Order 27 of Civil P. C., Rule 78 of the J. and K. State Law Deptt. Manual and the Notification S. R. O. 413 dated 18/8/1973.

4. These provisions on reproduction read as under.

Order 27, Rule 1 :

In any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or

special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the

facts of the case.

Order 27, Rule 2:

Persons being exofficio or otherwise authorised to act for the Government in respect of any judicial proceedings shall be deemed to be the

recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Rule 78 of the Law Deptt. Manual:

Public Prosecutor to be Government Pleader: All Public Prosecutors shall be exofficio Government Pleaders for all purposes other than those

specified under O. XXVII, R. 4 and O. XXXIII, R. 6 of the Code of Civil Procedure.

Notification S. R. O. 413 dated 1881973:

SRO413: For purposes of the provisions of Rules 1 and 2 of Order 27 and Section 2 (7) of the Code of Civil Procedure, Svt. 1977, and in

modification of paras 38 and 44 of the Revised Law Department Manual, 1935, the Government is pleased to make the following order:

1. In suits by or against the Government, the plaint or Written statement shall be signed by the Secretary/Head of the Concerned Department and

shall be verified by either of them or by any other gazetted officer of the Department who is acquainted with the facts of the case.

2. The Secretary/Head of the concerned Department and the Secretary to Government, Law Department are exofficio authorised to act for the

Government in respect of all Judicial Proceedings.

Explanation: For purposes of paras 1 and 2 above, Secretary shall include the Additional Secretary, the Special Secretary, the Deputy Secretary

and the Under Secretary.

3. The Secretary to Government, Law Department, the Deputy Secretary and the Under Secretary in that Department shall be Government

pleaders for the purposes of performing all the functions of the Government Pleader under the Code of Civil Procedure within the meaning of

Section 2 (7) of the said Code.

By order of the Government of Jammu and Kashmir.

SD/ Sheikh Ghulam Rasool,

General Department.

5. There is no denial that Mr. Bakshi is a Public Prosecutor and thus a Government Pleader exofficio for all purposes except those specified under

Rule 4 of Order 27 and Rule 6 of Order 33, Civil Procedure Code, according to Rule 78 of the Law Department Manual. He was therefore

undoubtedly authorized to appear on behalf of the State being an exofficio Government Pleader. The appearance of Mr. Bakshi on behalf of the

State cannot therefore be found fault with.

6. There is no infirmity in the written statement filed on behalf of the State either. Under Order 27, Rule 1 of the Civil P. C a plaint or written

statement on behalf of the Government can be signed by such person as the Government by general or special order may appoint in that behalf. A

Public Prosecutor being an ex officio Government pleader by force of Rule 78 of the Law Department Manual Mr. Bakshi was competent enough

to sign the written statement on behalf of the State as he was a Government pleader for all purposes other than those specified in Rule 4 of Order

27 and Rule 6 of Order 33 of the Civil P. C. Under Rule 2 of Order 27 also Mr. Bakshi being ex officio Government Pleader was authorised to

act for the Government in respect of any judicial proceedings and was as such a recognised agent who could appear, act and make applications

under the Civil P. C. on behalf of the Government. On the touchstone of the aforesaid provisions of the Civil P. C. and Rule 78 of the Law Deptt.

Manual Mr. R. P. Bakshi was competent to sign the written statement on behalf of the State even in the absence of a formal power of attorney

executed in his favour by a person authorised by the Government in that behalf. Notification SRO 413 dated 1881973 merely enlarges the scope

of Rule 78 of the Law Deptt. Manual in that it authorises a Secretary to the Government and the head of the departments also to sign the pleadings

on behalf of the Government The contention of the petitioner that the Deputy Commissioner Food and Supplies was not competent to sign the

written statement on behalf of the State is correct, but the written statement has been signed not only by the Dy. Commissioner Food and Supplies

but also by Mr. Bakshi the Government pleader.

7. For these reasons therefore, I hold that there is no infirmity in the written statement filed on behalf of the State nor is there anything wrong in Mr.

Bakshi's appearance as counsel on behalf of the State. All the three aspects of the matter stand decided. The revision is accordingly disposed of as

indicated above.