
(1970) 06 AP CK 0003
In the Andhra Pradesh High Court
Case No : W.P.S.R. No. 35571 of 1970

M. Parthasarthu and Others

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 11-06-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14, Order 6 Rule 17
Constitution of India, 1950 — Article 226

Citation : AIR 1971 AP 49

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Advocate : Y. Sivarama Sastry, for the Appellant; Principal Government Pleader, for the Respondent

Judgement

1. Fourteen persons purport to file this writ petition. Though allof them signed the vakalt from onlyone of them signed and verified the writ petitionstating that he was doing so foir himself and onbehalf of other petitioners. A letter entitled "authorisation latter" purporting to be under Rule 17 of the Civil Rules of Practice and Order 6, rule 14, Civil P.C. signed by petitioners 1 to 3 and 5 to 14 was also filed with the writ petition. It says:-

"WE, the undersigned petitiioenrs hereby authorise Sri G. Pattabhirama Sarma 4th Petitioner in Writ Petition No.1 of 1970 to sign and verify the writ petition on our behalf."

The Officer took an objection that all the petitioners shuld either sign and verify thewrit petition or theyshoudl file an affidavit or a Poer of Attorney authorising the 4th petitioner to sign and verify the writ petition.. It was objected that a mere letterof authorisation is not sufficietn compliance with the Rules. The learned counsel for the petitioner disagreed with thisobejction and hence the matter has been referred to me.

2. Rulle 3 (a0 of the Rules which regualte the proceedings under Art. 26 (of the

Constitution) published on 21-5-1970 requires that the petitions shall be signed and verified by the petitioners in the manner provided for signing and verification of pleadings under the Code of Civil Procedure, Order 6, Rule 14 of the CPC is the relevant provision and it lays down that every pleading shall be signed by the party and his pleader (if any); Where, however, a party, by reason of absence or for other good cause, is unable to sign the pleading it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. By virtue of the provisions of Rule 3(a) of Order 6, the requirement of Rule 14 of Order 6, Civil P.C., have become applicable to writ proceedings. Accordingly, if a party is unable to sign writ petition himself any person duly authorised by him can sign the same. The Code does not define the words "duly authorised". Granting a power of Attorney is certainly a due authorisation" universally accepted by law. What other modes of due authorisation could be adopted by law. What other modes of "due authorisation" could be adopted and whether a mere letter of authorisation is one such mode of "due authorisation" is the question now to be considered.

3. Though it is not of common occurrence and may happen very rarely, yet the possibility of one person claiming to file a writ petition on behalf of several other persons, but doing so without their authority and consent or even knowledge cannot be altogether excluded. It should be noted that the right to invoke the extraordinary jurisdiction of this Court under Article 26 is a personal remedy. Only a person who is aggrieved by something done or omitted to be done can bring a cause to this Court by way of a writ petition. It is therefore, essential to ascertain that only aggrieved persons come to this court. It is only in order to find out petitioners are such persons, the procedure of Rule 14 of Order 6, Civil P.C. is adopted in writ proceedings also. If the party or parties himself or themselves sign the petition, it is well and good. Otherwise, the person signing and verifying the petition must obtain "due authorisation for the other petitioners. Undoubtedly it is only a rule of convenience but also one of prudence to insist upon production of a power of Attorney or an affidavit, evidencing the claim of the party who signs and verifies a petition that he has been duly authorised by the other petitioners so to do.

An affidavit is a sworn statement of the other petitioners duly attested by an authority authorised by law to so attest. The possibility of getting false authorisations is thus excluded or in any case minimised by making a sworn statement in the presence of a duly constituted authority. It is pertinent to note that clause (b) of Rule 3 of the Writ petition Rules requires that:-

"The facts relied on by the petitioner shall be verified by an affidavit which shall be filed along with the petition. It is thus manifest that the Court is very anxious to have not only the petitioners that come to the Court but also the facts alleged by them are verified. Such verification is easily done by an affidavit purported to be signed by order petitioners is neither a sworn statement of those persons nor is it signed in the presence of a recognised authority. Thus, insistence upon the filing of a power of Attorney or on a sworn affidavit is a rule of convenience as

well as of prudence.

4. Moreover, reading Rule 3 (a) of the Rules and Order 6, Rule 14 of the Code of Civil Procedure with the other relevant rules of procedure demonstrates that some such proof of "due authorisation" is necessary. Rule 20 of the Writ Petition Rules says:-

"All the other rules relating to causes and matters coming before the Appellate Side of the High Court will apply to the Writ Petitions and the Writ Appeals in so far as they are not inconsistent with these rules."

Thus, the Appellate Side Rules of this Court in so far as they are not inconsistent with these Rules, are made applicable to Writ Proceedings. Rule 23 of the Appeals Side Rules of Andhra Pradesh requires the vakalatnama to be executed or its execution attested before any one of the authorities enumerated therein. That authority or functionary shall certify by his signature and designation that the Vakalatnama has been duly executed. Likewise, under Rule 52 of the same Rules, if a petition is presented by a party, it shall be signed or marked by him. and such signature or mark shall be acknowledged before the Registrar. or some other functionary who shall certify therein that the contents of the petition were explained by him and the signature or mark of the petitioner was made or acknowledged before him.

Similarly, as per Rule 56, affidavits intended for use in the appellate side of this Court have to be made before any one of the authorities or functionaries enumerated therein and such officer or person before whom an affidavit is made shall state the day when and the place where the same is taken and sign his name and description at the end, stating that the affidavit was sworn or solemnly affirmed in his presence. Even alterations and under lineations are required by sub-rule (4) to be authenticated by the initial of the officer or person. Thus, great care is taken to see that every vakalat or petition or affidavit filed before the Court is signed or sworn by the person purporting to file it. Rule 52 deals with petitions and there is no reason to hold that the precautions taken for certifying the signature on the petitions are not intended to apply to the filing of Writ petitions.

It is, therefore, reasonable to assume that the words "duly authorised" in Rule 14 of Order 6, Civil P.C. mean and require that such authorisation should be in some form analogous to the requirements of Rule 52 of the Appellate Side Rules.

4. Moreover, reading Rule 3 (a) of the Rules and Order 6, Rule 14 of the CPC with the other relevant rules of procedure demonstrates that some such proof of "due authorisation" is necessary. Rule 20 of the Writ Petition Rules says:-

5. The relevant provisions of the Civil Rules of practice also make this position very clear. It may be that those rules may not in terms apply to Writ proceedings. But, the principle of the procedure prescribed therein for Vakalatnamas and affidavits is similar to the one contained in the Appellate

Side Rules. Rule 18 relates to the appointment of Pleaders. It also requires that the execution of the Vakalatnama shall be attested by an officer or functionary referred to therein.. Rule 33 requires an affidavit to be filed as proof of facts in interlocutory proceedings. Affidavits under Rule 34 have to be sworn in before a recognised officer or functionary, More significant is Rule 17 which requires to be signed or verified by any person on his behalf a written authority in this behalf signed by the party shall be filed in Court,, together with an affidavit, verifying the genuineness of the party and stating the reason of his inability to sign or verify the proceedings and proving the means of knowledge of the facts set out in the proceedings of the person signing or verifying the same.

This Rule throws much light on the problem to be resolved in this reference. It requires, that a written authority signed by the party, who is unable to himself sign or verify the proceedings, together with an affidavit stating the reasons of his inability for signing and verifying the proceedings himself, to be filed. No reason is conceivable for making distinction between this procedure that is made applicable and the procedure that has to be followed in signing and verifying writ petitions.

6. It follows therefore that it is not only a rule of convenience and prudence but also a logical consequence of the relevant rules that a party, who is unable to sign the writ petition himself, should either file a Power of Attorney or an affidavit stating the reason for his inability to personally sign and verify the petition and authorising some other person to sign and verify on his behalf.

7. Reference to the decided cases cited at the Bar does not lead to a different conclusion. In Subbiah Pillai alias S.S.M. Subramania Pillai Vs. Sankarapandiam Pillai and Others, , the Division Bench was dealing with a case where a plaint was filed with the consent and knowledge of the plaintiff but not signed by him. The Court held that the absence of signature is an omission which could be cured and indeed should be corrected in the interests of justice. While doing so, the learned Judge referred to the decision of the Privy Council in Mohinimohun Das. v Bungai Buddan Saha Das ILR 1890 Cal 580 and a decision of the Allahabad High Court in Basdeo v. John Smidt. ILR (1899) All 5, the result of the two decisions by the Judicial Committee and the High Court of Allahabad is that;-

"Where a plaintiff has not signed a plaint, filed with his knowledge and consent, it is an omission which can be cured, and, indeed should be corrected in the interests of justice."

The learned Judges of the Madras High Court followed the same Rule.

8. Learned author Mulla at page 720 of his Commentary on the Code of Civil Procedure, 13th Edition has this to say on the question.

"The signing of plaints is merely a matter of procedure. If a plaint is not signed by the Plaintiff or by a person duly authorised by him in that behalf, and the defect is discovered at any time before judgment, the Court may allow the plaintiff to

amend the plaint by signing the same . If the defect is not discovered until the case comes on for hearing before an appellate Court, the appellate Court may order the amendment to be made in that Court. The appellate court ought not to dismiss the suit or interfere with the decree of the lower Court merely because the plaint has not been signed. The omission to sign or verify a plaint is not such defect as could affect the merits of a case or the jurisdiction of the Court." The above authority shows that signing and verifying a plaint is only a matter of procedure; nevertheless a requirement of the law. If the failure of the plaintiff to sign and verify the plaint is discovered at any stage, it should be permitted to be corrected. At the same time, if the plaint purports to be signed and verified by some person other than the party it should be shown that person has done so on due authorisation, i.e., with the knowledge and authority of the party. This does not however, exclude the need of adequate proof of the claim that the person has signed the plaint after securing due authorisation from the party.

9. The Patna High Court in *Bibi Asghari and Another Vs. Muhammad Kasim and Others*, , held that it is sufficient if it is shown that a person, who has signed the plaint on behalf of a plaintiff had done so with the knowledge and authority of the latter. It is plain that such knowledge and authority should be shown to the satisfaction of the Court, to exist.

10. In *Bengal Jute Mills Vs. Jewraj Heeralal*, it was held by the Court, after examining the person concerned in open Court. that during the temporary absence of the principal, the Munib Gumashta was orally instructed and authorised to do everything in connection with the business and, therefore, he was duly authorised and therefore, he was duly authorised as contemplated by Order 6. Rule 14, Civil P.C. From this it was sought to be argued by the learned counsel that even oral authorisation is sufficient. It should not, however, be forgotten that this oral authorisation was accepted by the Calcutta High Court only after examining the person concerned in open Court and recording his evidence. After all, in every case the real question is whether there is "due authorisation" and the Court, if it thinks it necessary can call for and examine witnesses or examine other evidence in order to test whether there has been due authorisation or not. However, it is undoubted that it would result in great waste of time and money of the Court as well as the parties to establish due authorisation by adducing oral evidence for due authorisation must be proved as a fact, Filing of an affidavit or a Power of Attorney are the easiest and at the same time safest method available to prove that fact.

11. Once again the decision in *All India Reporter Ltd. and Another Vs. Ramchandra Dhondo Datar*, , lays down the same rule that the provisions of O.6 Rule 14 merely relate to procedural requirements in preventing signing and verification of a plaint and non-compliance therewith is not fatal and can be cured by amendment at any stage. An observation here resting on AIR 1943 Cal 14 that:

"The words "duly authorised; in Order 6 Rule 14 need not be restricted to mean

authorised by proper written authority or by power of Attorney." was very much stressed by the learned counsel before me. It is true that authorisation is permissible. But, at the same time it should be remembered that the Court must be satisfied that the person signing and verifying the petition on behalf of the parties is duly authorised to do so. That satisfaction can be brought about only by certain accepted modes of proof. As I said, adducing oral evidence in this behalf results in great loss of time to the Court and hardship to the parties and is, therefore, undesirable.

12. There is, therefore, no doubt in my mind to hold that in order to avoid all future difficulties, doubts and complication it is essential for the parties to prove "due authorisation" by producing a Power of Attorney or a sworn affidavit of the party who is not personally signing and verifying the petition.

13. Even so, learned counsel submitted that the requirement of filing an affidavit has been satisfied in this case by the fourth petitioner who had filed and verified the petition on behalf of the other petitioners, has himself filed an affidavit by a person who is actually signing and verifying the petition does not meet the requirements of the situation. What is required is the affidavit of the party or parties who is or are not signing and verifying. The petition does not meet the requirements of the situation. What is required is the affidavit of the party or parties who is or are not signing and verifying. Otherwise, the very purpose for which such an affidavit is required is likely to be defeated. After all, the fourth petitioner who is swearing to the affidavit has already signed the petition and it would not be difficult for him to swear to another affidavit. If the Court is to be satisfied that the parties had authorised him to sign and verify the petition on their behalf, it is their affidavit that is essential to prove such authorisation and not the affidavit of the person who has come forward that he has got a representative capacity.

14. For the reasons, I answer the reference by holding that if some of the parties to the writ petition do not personally sign and verify it, but authorise somebody else to sign and verify on their behalf either a Power of Attorney or an affidavit sworn by them in the presence of an attesting Officer or functionary recognised by law stating the reasons for their inability to sign and verify the petition personally and authorising another person to sign and verify on their behalf, should be filed.

15. Before I part with the case, I must express my thanks to the learned Principal Government Pleader who has rendered me valuable assistance on my request.

16. Reference answered.