

(1934) 12 PAT CK 0012
In the Patna High Court

Mt. Binda Kuer and Others

APPELLANT

Vs

Lalita Prasad Chaudhary and Others

RESPONDENT

Date of Decision : 08-12-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2
Limitation Act, 1963 — Section 5

Citation : AIR 1934 Patna 290(1)

Hon'ble Judges : Courtney-Terrell, C.J.;Kulwant Sahay, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—These are applications for leave to appeal to His Majesty in Council from a decision of this Court which decided two first appeals, that is to say First Appeals Nos. 228 and 250 of 1928. The matter for our decision is whether the applications were properly lodged and secondly whether any extension of time should be given u/s 5 of the Limitation Act and under Order 3, Rule 2 of the Code of Civil Procedure. The litigation began by a suit in the trial Court in which the plaintiffs were successful and the suit was decreed. Some of the defendants launched appeal No. 228 of 1928 to the High Court. Others of the defendants launched appeal No. 250 to the High Court. The judgment of the High Court in the case of the two appeals which were heard together was as to First Appeal No. 228 of 1928 that the appeal was allowed and the suit was dismissed.

2. As to First Appeal No. 250 of 1928 all the defendants appealed and the appeal was successful and the suit was entirely dismissed.

The plaintiffs now seek leave to appeal to His Majesty in Council. There were four plaintiffs who in the month of March filed two petitions numbered respectively 7 and 8 for leave to appeal and notice was served upon all the defendants. Some of the defendants in both cases have been represented before this Court on an objection to the granting of the certificate for leave to appeal to His Majesty in Council. Others of the defendants though having received notice raise no objection. The only objection which need be considered concerns the

vakalatnamas upon which the applications were launched.

3. In the first instance, the learned Advocate for the plaintiffs-appellants lodged vakalatnamas signed by one Sianandan who was one of the plaintiffs on behalf of the other three appellants. We found on a reference to the office that this has in this Court been the practice hitherto. Nevertheless the learned Advocate on behalf of the respondents whom he represents objected under Order 3, R.2 of the CPC that the vakalatnamas so lodged were irregular. The rule is as follows:

The recognized agents of parties by whom such appearances, applications and acts may be made or done are: (a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

R. 1 of Order 3 is as follows:

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting on his behalf: Provided that any such appearance shall, if the Court so directs, be made by the party in person.

4. It would therefore appear, notwithstanding the practice, that for an act in the Court to be valid, the act must either be performed by the party himself or by a party authorized by a power-of-attorney or by a pleader appearing on his behalf that is to say authorized by a proper vakalatnama. Accordingly on the matter coming before this Bench we directed that the learned Advocate who appeared for the appellants must either come armed with a power-of-attorney on behalf of the three petitioners other than Sianandan in favour of Sianandan or he must come with vakalatnamas signed by the four appellants. The learned Advocate has appeared before us to-day armed not with a power-of-attorney by the other petitioners in favour of Sianandan, but with two vakalatnamas which he says satisfy the requirements made by this Bench. One is in respect of Privy Council Appeal No. 7 and the other in respect of Privy Council Appeal No. 8 of 1933.

5. The vakalatnamas are in the usual form, but each of them is on two sheets of paper which are attached together, the typewritten portion of the authorization continuing from the first page on to the second. On the first page appear the signatures of three of the petitioners and the second page bears the signature of fourth. The date of the signatures on the first page is the 17th November. The date of the signatures on the second page is the 18th November. There is no dispute as to the fact that the petitioner who signed the second page lives at a very great distance from the other three appellants and it is clear that it was impossible for entire document to be sent from the residence of the first three petitioners to that of the fourth petitioner in one day.

6. But an examination of the form of the vakalatnama makes it perfectly clear

that the person signing either page would know perfectly well what it was that he was signing and doubtless the two separate pages were sent to the three first petitioners and the fourth petitioner respectively on the same day in order to save time but no possible question can arise that any one of the petitioners could have been ignorant as to what he was signing. Objection is taken that from the appearance of the vakalatnama in two sheets and signed as I have described neither of the parties can have signed a complete document.

7. Having regard to what appears upon the two sheets this argument to my mind is completely unsound and the vakalatnama is perfectly in order. In any case this is a proper case in which an extension of time should be given for the completion of the formality having regard to the extremely technical nature of the objection which has been taken. The learned advocate for the appellants now appears before us and states at the Bar that he is instructed by the four petitioners and has instructions to state that the vakalatnama is the act of all four. In these circumstances in my opinion the vakalatnamas cannot be objected to.

8. Two cases have been brought to our notice one being that of *Sheikh Palat v. Sarwan Sahu* AIR 1920 Pat 581, which was decided by this Court. In that case the learned advocate who filed the appeal was at the time of filing not armed with any vakalatnama at all and the parties subsequently armed him with one after the date of the expiry of the period of limitation. It was held that for a petition to be filed and the vakalatnama to be in proper order, it must be in proper order within the period of limitation. Speaking for myself I feel some doubt as to the correctness of that decision. The learned Judges do not seem to have been presented with the argument that it is possible for the act of an agent to be subsequently ratified by the principal and in such circumstances the act becomes the act of the principal even though when it was performed, it was performed without his knowledge or approval. Subsequent approval means the adoption of the act of the agent by the principal as to the date when the agent performed the act.

9. A similar comment may be made as to the decision in *Sri Chandan Bhuya v. Harooi Seth* (1895) 13 CLJ 544. Both of those cases however differ from this case in that in those cases the act was performed by the Vakil without any vakalatnama at all. In this case it is a mere question of the technical correctness of the first and second vakalatnamas. The application in so far as Sianandan was concerned was in order from the very beginning and the only doubt arose as to the position of the other three petitioners who have since ratified his act. The vakalatnamas filed on the 23rd November are in order and so far as the matter of time is concerned we see no reason why an extension of time up to that date should not be given. The vakalatnamas will therefore be accepted and the necessary certificate for leave to appeal will be granted.

Kulwant Sahay, J.

10. I agree.