
(2015) 01 KAR CK 0449

In the Karnataka High Court

Case No : Writ Petition No. 82399 of 2013 (GM-CPC)

Prism Enterprises

APPELLANT

Vs

Standard Engineering

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 2, 151

Citation : (2015) 2 KarLJ 403

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : R.M. Kulkarni, for the Appellant; Shreevatsa S. Hegde, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Heard the arguments of Sri R.M. Kulkarni, learned Counsel appearing for the petitioner and Sri Shreevatsa Hegde, learned Counsel appearing for the respondent-plaintiff. Perused the impugned order. Respondent-plaintiff had instituted a suit for ejection of the petitioner-defendant from the suit schedule premises on various grounds. Plaintiff came to be presented by one of the partners of the plaintiff-firm and defendant on service of suit summons, appeared, filed written statement and contested the matter. When matter was set said down for evidence, plaintiff has filed an application under Order 3, Rules 1 and 2 read with Section 151 of Civil Procedure Code, 1908 seeking permission of the Court to appear through power of attorney holder and tender evidence in the matter. Said application came to be resisted by petitioner-defendant by filing statement of objections and contending inter alia that power of attorney holder does not have personal knowledge about the facts and in order to avoid test of cross-examination, he has devised the method of authorising the power of attorney holder to tender evidence. It was also contended when plaintiff was attending all other Courts, where several litigations are pending, including the criminal proceedings he is capable of attending the Court adjudicating the suit in

question and as such, he ought to tender his evidence personally and cannot authorise the power of attorney to tender evidence.

2. Trial Court on appreciation of rival contentions by impugned order has allowed the application and permitted the plaintiff to tender evidence through power of attorney on the ground that if the power of attorney holder fails to answer the questions that would be put to him in the witness-box, plaintiff would not succeed in suit and in criminal proceedings, accused will have to be personally present and that would not be a ground to reject the prayer of plaintiff, as such, it has allowed the application.

3. Reiterating the objections filed before Trial Court, Sri R.M. Kulkarni would contend that application in question which was filed before Trial Court was by the power of attorney holder himself and when the partners of plaintiff firm had authorised the Principal to file suit and conduct the case and tender evidence, he could not have sub-delegated his power to the power of attorney holder and as such, non-consideration of this vital aspect has resulted in great prejudice to defendant. He would also elaborate his submission by contending that Trial Court has not considered the fact that power of attorney holder is not personally aware of the facts and circumstances of the case and in the absence of his personal knowledge relating to the facts of the case, he cannot tender the evidence. In support of his contention, he has relied upon the judgment of Hon''ble Apex Court in the case of A.C. Narayanan v State of Maharashtra in Criminal Appeal No. 73 of 2007.

4. At the out set, it requires to be noticed that pursuant to order passed by Trial Court, the powder of attorney has been examined as P.W. 1 already and during the course of trial, resolutions passed by plaintiff partnership firm has been produced. The first resolution Ex. P. 3 would indicate that all the partners of the firm vide resolution dated 3-10-2008 had authorised Sri Shivakumar Dundappa Humbarwadi (Principal) to sign, execute all the required documents required for termination of the lease agreement relating to writ petition i.e., defendant before Trial Court. As per resolution dated 15-12-2008 Ex. P. 4 said Sri Shivakumar Dundappa Humbarwadi who had been earlier authorised has also been given power or authority to execute the power of attorney on behalf of the firm authorising third persons to take necessary legal action on behalf of firm including the fact of tendering evidence. It is pursuant to the same namely Ex. P. 4, power of attorney has been executed by Principal Sri Shivakumar Dundappa Humbarwadi in favour of the agent namely Sri Anil Kumar, as per power of attorney dated 30-8-2010 which has also been marked as Ex. P. 1 before the Trial Court. There cannot be any dispute with regard to the proposition of law that an agent, not being personally aware of the facts would not be entitled to tender evidence and even if such an evidence is tendered, it would not be eschewed by the Court. In fact, Trial Court has opined that if power of attorney fails to answer the question put to him in the witness-box, plaintiff would not succeed in the suit and as such, the objections raised by defendant has been

rejected as untenable. To allay the fears of the defendant, it has also taken note of the fact namely Rule 1 of Order 3 into consideration to hold that said provision empowers the Court to direct plaintiff to be present when his presence is required before the Court and in the event, Trial Court were to direct the plaintiff to be present before the Court. As such, it has allowed I.A. No. 2 filed by plaintiff which order does not suffer from any infirmity calling for exercise of supervisory jurisdiction by this Court.

Petition lack merits. Hence, writ petition is hereby dismissed with costs quantified at Rs. 2,000/- payable by writ petitioner-defendant to the respondent-plaintiff.