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**(2000) 04 RAJ CK 0039**

**In the Rajasthan High Court**

**Case No : Civil Revision Petition No. 159 of 1994**

Rajasthan Vidhyapeeth Udaipur

APPELLANT

Vs

Smt. Motibai and Another

RESPONDENT

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**Date of Decision : 18-04-2000**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4

**Citation : (2000) 2 WLN 250**

**Hon'ble Judges : N.P. Gupta, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

N.P. Gupta, J.—The matter comes for consideration of stay petition. However on perusal of the revision petition it becomes clear that the revision itself is not maintainable. The revision has been filed by Shri Suresh Kumbhat, Advocate without any Vakalatnama, inasmuch as, there is only a memo of appearance on the record of the revision signed by Shri F.S. Mehta, Advocate giving out to be the counsel in the trial court and having instructions to act and plead on behalf of the petitioner. Unfortunately, revision has not been filed by Shri Mehta and that the memo is signed by Shri Bhatnagar and Shri Kumbhat and then admittedly they are not the counsels in the trial court. According to the provisions of Order 3 Rule 4, CPC for filing such revisions, there has to be appointment of an Advocate by the petitioner or by his recognised agent or by some other person duly authorised by or under the power of attorney to make such appointment and every such appointment is to be filed in the court. The memo of appearance appearing on record does not even purport to appoint Shri Kumbhat or Shri Bhatnagar as Advocates. Therefore, they cannot be said to be having any authority to file the revision. The revision, therefore, having been filed by unauthorised person cannot be entertained. That apart, having gone through the impugned order also find that the learned trial court has set aside the ex parte decree for eviction, on the ground that the summons of the suit purported to

have been served on the defendant on 7.8.1984 which has not been believed by the court and it has been found that the summons was neither served on the defendant nor it was affixed and all action was a fraud to get this shop vacated and was an abuse of the process of the court. As such the decree passed ex parte is ineffectivve. This finding recorded by the learned trial court is a pure finding of fact and I am not inclined to interfere with this finding on merits also.

2. Consequently, the revision petition is dismissed on both the grounds. Parties to bear their own costs.