

(1961) 09 MP CK 0035

In the Madhya Pradesh High Court

Case No : Second Appeal No. 306 of 1960

State of Madhya Pradesh

APPELLANT

Vs

Yatendra Prasad Sharma

RESPONDENT

Date of Decision : 29-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2, Order 3 Rule 4, Order 41 Rule 1

Citation : AIR 1963 MP 127

Hon'ble Judges : P.R. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the State Government against the judgment dated 5-10-1960 passed by the District Judge Gwalior, in Civil Appeal No. 54 of 1960 arising out of the decree passed by the First-Civil Judge Second Class Gwalior, in Civil Original Suit No. 64 of 1959.

2. A decree for recovery of a sum of money was passed against the State of Madhya Pradesh by the First Civil Judge Second Class Gwalior in the suit aforesaid. The State Government directed the Collector Gwalior to file an appeal against the judgment and decree passed by the Court of first instance. The memorandum of appeal was accordingly drawn up by the Government Pleader Shri Diwan and was filed by him under the signatures of the Collector Gwalior District and himself. Shri Diwan, however, did not file along with the memorandum of appeal a vakalatnama duly signed by the Collector Gwalior authorising him to act and appear on his behalf in the said appeal. The District Judge Gwalior held that inasmuch as Shri Diwan did not file a power of attorney or a vakalatnama signed by the Collector Gwalior along with the memorandum of appeal the appeal was presented by an unauthorised person and was, therefore, incompetent. He, therefore, dismissed the appeal. The State Government has now come up in Second appeal before this Court.

3. It appears that it was not brought to the notice of the learned District Judge that in the former Madhya Bharat State the Government Pleaders whose appointments were notified under Order 27 C. P. C. were not required to file a power of attorney or a vakalatnama along with the plaints or memoranda of appeal filed by them on behalf of the State Government which arose within the region for which the Government Pleaders were authorised to act and appear on behalf of the State Government. It is true that on formation of the State of Madhya Pradesh the practice of filing such vakalatnamas has been insisted upon and is as far as I am aware being followed. The lapse in this particular case on the part of Shri Diwan could in my opinion be remedied by allowing Shri Diwan to file a vakalatnama duly signed by the Collector Gwalior even after the presentation of the appeal by him. (See *Sheik Palat v. Sarwan Sahu* AIR 1920 Pat 581).

4. It was held in *Perla Satteyya Chetti Vs. Grandhi Venkataramanayya, and Kanhaiya Lal Vs. The Panchayati Akhara, ,* that a Pleader having authority can file a plaint or Execution petition without 3 Vakalatnama and the defect can be cured by a Vakalatnama being subsequently filed. The decisive factor is not filing of a vakalatnama but the existence of the power to act on behalf of the plaintiff, applicant or appellant as the case may be. In the present case Shri Diwan having obtained the signatures of the Collector Gwalior on the memorandum of appeal must be deemed to have been authorised by the Collector to file it in the Court on his behalf. A Vakalatnama signed by the Collector was no doubt necessary, but merely because it was not filed it cannot be presumed that the Government Pleader concerned acted without the authority of the appellant-in filing the appeal.

The omission by Shri Diwan to file a vakalatnama being purely technical in nature he should in my opinion have been allowed an opportunity to satisfy the appellate Court that he had duly been authorised by the Collector to present the memorandum of appeal and to file a vakalatnama signed by the Collector in proof of that fact. The fact of the existence of authority and the document by which that fact is sought to be established are two distinct things. Where there is a complete absence of authority in the person presenting a plaint or an appeal the suit or appeal will certainly be incompetent. But where the person presenting a plaint, application or appeal was prior to its presentation duly authorised by the person on whose behalf the plaint, application or appeal is presented, the fact that he was so authorised can, in my opinion, be proved at a later stage, and in such cases the filing of a power of attorney or vakalatnama even at a late point of time would cure the defect.

5. I would, therefore, set aside the judgment and decree passed by the lower appellate Court and direct it to admit the appeal and proceed to dispose of it in accordance with law. There shall be no order as to costs.