

(1980) 08 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1642 of 1974

Union of India and Another	Vs	APPELLANT
Mst. Asi and Others		RESPONDENT

Date of Decision : 06-08-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17

Citation : (1980) 08 P&H CK 0017

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : H.S. Gill, A.A.G. Haryana, for the Appellant; S.S. Rathor, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—This revision is directed against the order of the Additional District Judge, Karnal, dated 17th January, 1974, whereby he dismissed the appeal filed by the Union of India and another under order 41 Rule 17 of the Code of Civil Procedure.

2. The order of the learned District Judge is palpably illegal and erroneous in that he could not have dismissed the appeal under Order 41 Rule 17 of the CPC when the appellants' counsel was present. The learned Additional District Judge did not recognise the presence of the Government pleader appearing for the appellants for two reasons (i) that he could not act either for the Union of India or for the State Government and (ii) that he had asked for adjournment, adjournment had been declined yet he was not prepared to argue the case.

3. Identical questions, as have been raised by the Additional District Judge on his own, in his order regarding the maintainability of the appeal of the Union of India and of the State of Haryana on the ground that the Government Pleader who filed the appeal had no authority to do so, were raised before a Division Bench of this court in (Union of India v. M/s Harbans Singh Tuli and sons) F.A.O. No. 77 of

1980 decided on July 19, 1980. This Court after exhaustive review of the matter and the perusal of the notifications of the Central Government, the State Government, the relevant provisions of the Re-organisation Act and the Evidence act as also the provisions of Order 27 Rule 2 and 8-B of CPC held that State Government Pleaders were competent to act for the Central Government, that is, Union of India before as also after the re-organisation of the Punjab State. They were also competent to act for the State without filing any specific power of attorney from the State.

4. What is more, their Lordships in *Shastri Yagnashdasli and others v. Muldas Bhundardas Vaishya* and another AIR 1966 S.S. 1119 have clearly ruled that an objection to the maintainability of the appeal on the ground that the Pleader who presented the appeal was not competent to do so should have been taken by the Registry, once that is not done and the appeal is admitted for final hearing no objection to the maintainability of the appeal on the ground in question could be entertained by the Court at the argument Stage. In this regard following observation of Gajendragadhar, J. (as he then was) who delivered the judgment on behalf of the Bench can be noticed with advantage.

Before dealing with the principal point which has been posed at the commencement of this judgment, it is necessary to disposed of two minor contentions raised by Mr. V.J. Desai who appeared for the appellants before us Mr. Desai contends that the High Court was in error in treating as competent the appeal referred by respondent No. 1. His case is that since the said appeal had not been duly and validly filed by an Advocate Authorised by respondent No. 1 in that behalf, the High Court should have dismissed the said appeal as being incompetent. It will be recalled that the appeal memo as well as the Vakalatnama filed along with it were signed by Mr. Daundkar who was then the Assistant Government Pleader, and the argument is that since the Vakalatnama had been signed by respondent No. 1 in favour of the Government Pleader, its acceptance by the Assistant Government Pleader was invalid and that rendered the presentation of the appeal by the Assistant Government Pleader on behalf of respondent No. 1 incompetent Order 41 Rule 1 of the Code of Civil Procedure, inter alia that every appeal shall be preferred in the form of a memorandum filed by the appellant or his Pleader and presented to the Court or to such Office as it appoints in that behalf. Order 3 Rule 4 of the Code relates the appointment of a Pleader. Sub-rule (1) of the said Rule provides, inter alia, that no pleader shall act for any person in any Court unless he has been appointed for the purpose by such person by a document in writing signed by such person. Sub-rule (2) adds that every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court in the manner indicated by it. Technically, it may be conceded that the memorandum of appeal presented by Mr. Daunkar suffered from the infirmity that respondent No. 1 had signed his Vakalatnama to favour of the Government Pleader and Mr. Daunkar could not have accepted it, though he was working in the Government Pleader's office as an Assistant Government Pleader. Even so, the said memo was accepted by the

office of the Registrar of the Appellant Side of the High Court, because the Registry regarded the presentation of the appeal to be proper; the appeal was in due course admitted and if finally came up for hearing before the High Court, The failure of the Registry to invite the attention of the Assistant Government Pleader to the irregularity committed in the presentation of the said appeal cannot be said to be irrelevant in dealing with the validity of the contention raised by the appellants. If the Registry had returned the appeal to Mr. Daundkar as irregularly presented, the irregularity could have been immediately corrected and the Government Pleader would have signed both the memo of appeal and the Vakalatnama. It is an elementary rule of justice that no party should suffer for the mistake of the Court of its office. Besides one of the rules framed by the High Court on its Appellate Side-Rule 95 seems to authorise an Advocate practising on the Appellate Side of the High Court to appear even without initially filing a Vakalatnama in that behalf. If an appeal is presented by an Advocate without a Vakalatnama duly signed by the appellant he is required to produce the Vakalatnama authorising him to present the appeal or to file a statement signed by himself that such Vakalatnama has been duly signed by the appellant in time. In this case, the Vakalatnama had evidently been signed by respondent No. 1 in favour of the Government pleader in time; and so, the High Court was plainly right in allowing the Government Pleader to sign the memo of appeal and the Vakalatnama in order to remove the irregularity committed in the presentation of the appeal. We do not think that Mr. Desai is justified in contending that the High Court was in error in overruling the objection raised by the appellants before it that the appeal preferred by the respondent No. 1 was incompetent.

5. In the circumstances it cannot be said that the appeal was not properly presented as the Government Pleader who was appearing was not competent to file the appeal.

6. As regards the question as to whether the Court can refuse to recognise the presence of a counsel when he asks for an adjournment and is not in a position to argue the case despite the refusal of the request for adjournment, it may be observed, what the law requires is the physical presence of a party or his counsel and not whether that counsel or the party is in a position to assist the Court. Whatever the party or the counsel had to say had already been said in the grounds of appeal. It was the duty of the Court in such circumstances to decide the appeal on merits and not to dismiss it under Order 41 Rule 17, Code of Civil Procedure. In doing so the learned Additional District Judge failed to exercise jurisdiction to decide the appeal on merits and also acted with material irregularity in exercise of his jurisdiction in dismissing the appeal under Order 41 Rule 17 of the Code of Civil Procedure.

7. For the reasons aforementioned the order dated 17th January, 1974 is set aside and the Court below is directed to proceed in accordance with law.

8. While doing so it will be still open to it be satisfied that some official who was competent had taken a decision for the Union of India add State of Haryana to

file the appeal in question. However the competency of the Pleader who had filed the appeal cannot be raked up again before that Court in view of the decision rendered in this revision petition. No order as to costs.