

(2013) 12 AP CK 0048

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 2191 of 2012

Kowwuri Kanaka Reddy

APPELLANT

Vs

Nadella Yedukondalu and
Another

RESPONDENT

Date of Decision: Dec. 23, 2013

Citation: (2014) 3 ALD 305 : (2014) 3 ALT 578

Hon'ble Judges: M. Seetharama Murti, J

Bench: Single Bench

Advocate: S. Sridhar, for the Appellant; N.V. Anantha Krishna for Respondents 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Seetharama Murti, J.

This Civil Revision Petition under Article 227 of the Constitution of India filed by the unsuccessful respondent/plaintiff ("the plaintiff", for short) is directed against the orders dated 11-04-2012 of the learned III Additional District Judge, Kakinada, East Godavari District made in I.A. No. 3247 of 2011 in O.S. No. 7 of 2008 filed under Order III Rules 1 and 2 read with Section 119 of the CPC ("the Code", for short) allowing the request of the petitioners/defendants to accord permission to cross examine the proposed witness, a handwriting expert by another handwriting expert, Mr. Ashok Kashyap, in whose favour special power of attorney was executed. The facts that are necessary for disposal of this revision petition, in brief, are as follows: "The plaintiff had filed I.A. No. 3096 of 2011 under Order XXVI Rule 4(1)(a)(c) of the Code for appointment of an Advocate Commissioner to record the evidence of a hand writing expert, Mr. V. Muralidhar, Scientific Officer, A.P. Forensic Science Laboratories, Red Hills, Hyderabad, stating inter alia that exhibit A1 promissory note was examined by the said expert and that the said expert had furnished an opinion in respect of the disputed signature/s on the said exhibit and that, therefore, it is

just and necessary to appoint a commissioner for recording his evidence". The defendants filed counter in the said application filed by the plaintiff. Further, the defendants had also filed an application in I.A. 3247 of 2011 for according permission to them to have the expert witness, who furnished the disputed opinion, to be cross examined by another duly empowered expert by name Mr. Ashok Kashyap contending inter alia that the services of the said expert are required for cross examining the expert who had furnished the opinion in the matter. The court below, on considering the submissions of the learned counsel for both sides, ordered both the petitions holding as under:-

I.A. No. 3096/11 is also ordered and Sri G.V.S. Vinayaka Rao, Advocate, is appointed as Commissioner to record the evidence of Sri V. Muralidhar, Scientific Officer, A.P. Forensic Science Laboratories, Hyderabad, at Hyderabad. The said Advocate Commissioner shall permit Mr. Ashok Kashyap, another expert to cross-examine the said witness on behalf of the defendants.

Since the plaintiff wants to examine Mr. V. Muralidhar, Scientific Officer, A.P. Forensic Science Laboratories, Hyderabad, who examined Ex. A1 promissory note in proof of his report and since the defendants and their advocate are not experts in the particular subject and since the defendants have also executed Special Power of Attorney authorizing Mr. Ashok Kashyap who is another hand-writing expert, the defendants can be permitted to cross-examine the proposed witness by Mr. Ashok Kashyap another expert. Accordingly, points 1 and 2 are answered.

In the result, I.A. No. 3247/2001 is allowed.

2. Though the application filed by the plaintiff was allowed and an advocate-commissioner was appointed to record the testimony of the expert, who furnished the opinion, the plaintiff having been aggrieved of the above said orders in I.A. 3247 of 2011 filed this revision petition.

3. I have heard the submissions of the learned counsel for both the sides. I have carefully examined the order impugned in the revision.

4. The short but important question is - "whether it is legally permissible to permit a party's authorised agent other than an advocate to cross-examine the expert witness?" And, if so, whether in the facts and circumstances of the case it is just and necessary to accord permission to the defendants to have the expert witness cross-examined by another expert?

5. In the case on hand the defendants had sought permission of the Trial Court to permit a named expert [Sri Ashok Kashyap, who is duly authorised by them] to cross examine another expert who is proposed to be examined as a witness in the suit since he had furnished his opinion in regard to the disputed hand writings/signatures on the disputed document, exhibit A1. The trial Court had accorded permission by the impugned orders.

6. The first question viz., - "whether it is legally permissible to permit a party's authorised agent other than an advocate to cross-examine the expert witness?" need not detain this Court for long. In this regard it is advantageous to refer to *infra*, the relevant facts and the ratio in the decision in [Hari Om Rajender Kumar and others Vs. Chief Rationing Officer of Civil Supplies, A.P., Hyderabad](#). A question arose before this Court as to the competency of a general power of attorney holder to plead the case of the writ petitioners, who are all the Dall Mill owners residing in various parts of North India. The agent wanted to plead in the Court on the basis of a power of attorney on the ground that the principals have no confidence in the members of the legal profession as a whole. A question as to whether the said agent can be permitted to argue a case fell for consideration before this Court. This Court extensively referred to the relevant provisions of law and considered the words and the language employed in various provisions and further referred to the precedents on the subject and held as under:

It is therefore, clear that the provisions of Order III Rule 1 which permit appearance, applications or acting in any Court are subject to any other law and this includes the provisions of the Advocates Act, 1961 and in particular, Sections 32 and 33. It is further clear that so far as the signing or verifying or doing other acts are concerned, these could be done by the Power of Attorney duly authorised therefore but so far as appearing or practising in Court are concerned, they are subject to the provisions of Sections 32 and 33 of the Advocates Act. The right to appear in Court and plead for a principal as also the right to practice in Courts, have to be distinguished from the other acts, which a power of attorney can perform under Order III Rule 1 of the Code. So far as the right to appear and plead for a principal in Court as also the right to practice are concerned, these are governed by Sections 32 and 33 of the Advocates Act.

Section 32 of the Advocates Act uses the word "appear" while Sections 29 and 33 uses the expression "practise". The word "practise" include both acting and pleading and takes in all the normal activities of a legal practitioner. Though Section 33 of the Advocates Act uses the word "practise", we are here concerned with the word "appear" used in Section 32. A non-Advocate, when he seeks permission to appear cannot, in my view, be permitted to address the Court on the strength of the power-of-attorney.

This Court finally held that the Court has power to grant permission to non-lawyers to plead/argue cases in certain special circumstances.

7. Further, in [Madupu Harinarayana @ Maribabu Vs. The Learned 1st Additional District Judge and Others](#), , this Court referred to the above decision and other decisions on the subject and also the relevant provisions of law and had held as under:

A conspectus of Rules 1 and 2 of Order III of CPC, Section 2(a) and Sections 29, 30, 33, 34 of the Advocates Act, Rule 2 of Section 34 Rules and Cr.P.C. would show that all the pleadings in a proceeding shall be made by the party in person, or by his recognised agent. A party in person and a recognised agent, have to make an appointment in writing (vakalatnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the Rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf of the party, or his recognised agent, who engaged the advocate. Sections 29 and 30 of the Advocates Act make it clear that advocates are the only recognised class of persons entitled to practice law, and such an advocate should have been enrolled as such under the Advocates Act. Section 32 of the Advocates Act empowers the Court to permit any non-advocate to appear in a particular case. This only means that any person has to seek prior permission of the Court to argue a case if he is not an advocate enrolled under the Advocates Act. Further, it is an offence for a non-Advocate to practice under the provisions of the Advocates Act. Section 45 prescribes a sentence of six months imprisonment.

8. Sec. 32 in the Advocates' Act, 1961 reads as follows:--

32. Power of Court to permit appearances in particular cases. Notwithstanding anything contained in this Chapter, any Court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

Therefore, if special circumstances exist in a particular case, the Court has power to permit any person not enrolled as an Advocate to appear before it in that case.

9. Now that the first point is answered, the next question is as to whether in the case on hand, special circumstances exist to accord permission to one expert to cross examine another expert, who had furnished the opinion and is proposed to be examined as a witness in the case. Coming to the facts of the case, to record the testimony of the handwriting expert, who had furnished opinion in respect of the disputed writings/signatures on exhibit A1, a Commissioner was appointed by the Court below. The trial Court had allowed the application filed by the defendants and accorded permission to them to have the said expert cross-examined by another expert by name Mr. Ashok Kashyap accepting the contention that the services of such a qualified and experienced expert are required to thoroughly cross-examine the expert, who furnished the opinion. It is an admitted fact that the defendants had executed a special power of attorney in favour of the said expert, Ashok Kashyap, to appear on their behalf and to cross-examine the expert, who had furnished the opinion. It is urged on behalf of the defendants/respondents that the trial Court had rightly accorded permission. However, the learned counsel for the plaintiff/revision petitioner would contend as follows: "It is common knowledge that no two watches and two experts agree. The evidence of a handwriting expert is only an opinion

evidence having an empirical value. The expert is not being examined as a witness directly before the trial Court. An advocate-commissioner was appointed to record the deposition of the expert. If the said expert witness is to be cross-examined by another expert before an Advocate Commissioner, it would lead to unpleasant and avoidable confrontations between the two experts. There are many Advocates in the State who are experienced and qualified in cross-examining an expert witness. If necessary, a qualified and an experienced Advocate can be engaged to cross examine the expert witness. Further, such an Advocate can take the assistance and instructions from an expert like Mr. Ashok Kashyap and can cross examine the expert witness with such aid and assistance, if necessary. Day-in and Day-out, experts in various fields like doctors, handwriting experts, Chartered Accountants, Investigation Officers, Forensic Experts, Contractors, Engineers, Builders and Developers and other professionals appear before Courts as witnesses. It is not always necessary that such witnesses having rich experience in their respective fields be cross examined by another experienced person from the same field. In the case on hand, there are no special circumstances pleaded to allow Mr. Ashok Kashyap to cross examine the expert witness. The affidavit filed in support of the petition and the orders impugned are silent in regard to the existence of any special circumstances."

10. It is not the contention of the defendants/revision petitioners in the affidavit filed in support of the petition that their Advocate on record has no required scientific knowledge and experience to cross examine the expert witness and that no experienced Advocates are available to cross examine the expert witness. In the orders of the trial Court, a reference was made to the decisions of High Courts of other States to come to a conclusion that the Court has power to accord permission, but no special circumstances are recorded for according permission to the defendants as prayed for. Unless special circumstances are affirmed and established, permission cannot be granted to the defendants in the case on hand. Simply because the law allows according of permission, permission cannot be granted as a matter of course and even without a pleading and existence of special circumstances. In the facts and circumstances of the case, when the expert witness is being examined before an Advocate Commissioner, who was appointed to record the deposition of the said expert witness, it is not just and fair to accord permission, in the well-considered opinion of this Court. As rightly urged, it is always open to cross examine an expert by confronting passages from standard text books and by pointing out the facts peculiar to the case on hand. Therefore, this court finds acceptable merit in the contentions of the learned counsel for the plaintiff/revision petitioner. Viewed thus, this Court finds that the defendants have not made out valid and sufficient grounds and that there are no special circumstances to accord permission to the defendants to have the expert witness cross examined by another expert witness. In the result, the Civil Revision Petition is allowed without costs and the impugned order insofar as allowing the petition in I.A. No. 3247 of 2011 is set

aside. However, it is needless to mention that the Advocate for the defendants at the time of cross examining the expert witness is at liberty to take the assistance and instructions from an expert like Mr. Ashok Kashyap and can cross examine the expert witness with such aid and assistance, if necessary. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.