

# RAJASTHAN HIGH COURT

Amina Begum

Vs.

Mohd.Ramzan

Civil Revision Petition No. 177 of 2004

(Sunil Kumar Garg, J.)

16.08.2004

## JUDGEMENT

**Sunil Kumar Garg, J.**

1. This revision petition has been filed by the petitioner-plaintiff against the order dated 6-5-2004 passed by the learned Additional Dist. Judge (Fast Track), Parbatsar, Dist. Nagaur by which application dated 25-9-2003 by which a prayer was made by the plaintiff- petitioner for withdrawing the suit on the basis of compromise dated 25-9-2003 was rejected.

2. It arises in the following circumstances:

(i) That the plaintiff petitioner filed a suit for permanent injunction against the respondents-defendants on 1-6-1998 with a prayer that they be restrained from interfering with the possession of the plaintiff-petitioner over the property mentioned in para 1 of the plaint.

(ii) That the suit was contested by the defendant-respondents by filing written statement and on the basis of pleadings of the parties, issues were also framed.

(iii) That the case of the plaintiff-petitioner is that during pendency of the suit, the defendants-respondents executed an agreement for sale of property in dispute on 2-12-2002 in favor of Sahabuddin and the respondents-defendants further executed a power of attorney dated 2-12-2002 in favor of Sahabuddin in whose favor the agreement dated 2-12-2002 for sale was executed. It was further stated by the plaintiff-petitioner that by the power of attorney dated 2-12-2002, the defendants-respondents further authorized Sahabuddin to take steps on behalf of the defendants-respondents in all proceedings pending in the Court.

(iv) During pendency of the suit, an application was filed by the plaintiff-petitioner on 25-9-2003 in the abovementioned suit for withdrawing the suit on the basis of the compromise dated 25-9-2003 which was also annexed with the application dated 25-9-2003 and that application was signed by the plaintiff-petitioner and by Sahabuddin on behalf of the respondents-defendants who was power of attorney-holder of defendants-respondents.

(v) The application dated 25-9-2003 of the plaintiff-petitioner was contested by the defendants-respondents by filing separate reply on 14-10-2003 stating that the respondents-defendants had not appointed Sahabuddin as their general power of attorney-holder nor had given any power to make compromise on their behalf and the special power of attorney which was executed by them in favor of Sahabuddin was orally cancelled on 3-12-2002 in presence of respectable persons and hence he had no right or interest to take steps on their behalf in the present suit and further the so-called compromise is nothing but a forged document and thus application for withdrawal be dismissed.

(vi) After hearing both the parties, the learned trial Court through impugned order dated 6-5-2004 rejected that application filed by the plaintiff-petitioner for withdrawal of the suit *inter alia* holding that since the plaintiff-petitioner had filed the suit in the year 1998 and statements of 6 witnesses have been recorded on behalf of the plaintiff-petitioner and the respondents-defendants have denied the case of the plaintiff-petitioner, thus, the plaintiff-petitioner could not force the defendants-respondents to make compromise without their consent and since there was no consent on behalf of the defendants-respondents for the so-called pro-forma of compromise dated 25-9-2003, therefore, the same could not be attested by the Court.

Aggrieved from the order dated 6-5-2003, this civil revision petition has been filed by the plaintiff-petitioner.

3. In this case, the main case of the learned counsel for the petitioner- plaintiff is that the defendants-respondents had not denied execution of agreement for sale in favor of Sahabuddin dated 2-12-2002 nor they had denied receipt of Rs. 10,00,000/- for the property in dispute. Further they had admitted the execution of power of attorney dated 2-12-2002 in favour of Sahabuddin and the same has been produced and a recital of the power of attorney dated 2-12-2002 executed by the defendants-respondents in favours of Sahabuddin reveals that Sahabuddin was given that power of

attorney to do anything in the cases pending against the defendants-respondents and thus, if Sahabuddin in capacity as power of attorney-holder of defendants-respondents had entered into compromise on 25-9-2003 and on the basis of that compromise if the plaintiff-petitioner wanted to withdraw the suit, the permission should have been granted and hence, the impugned order in question is basically illegal and without jurisdiction and should be set aside.

4. On the contrary, the learned counsel for the defendants-respondents has supported the order dated 6-5-2004 and has submitted that the same is based on proper appreciation of facts and law and does not require any interference by this Court.

5. Heard and perused the case file.

6. There is no dispute on the point that Sahabuddin was appointed as power of attorney-holder on behalf of the defendants-respondents through power of attorney dated 2-12-2002 as the same has been admitted by the defendants-respondents in their reply. A bare recital of the power of attorney dated 2-12-2002 reveals that all powers were given to Sahabuddin in respect of contesting the case pending in the Court below.

7. The question which arises for consideration is whether in the facts and circumstances of the present case, the power of attorney dated 2-12-2002 executed by the defendants-respondents in favor of Sahabuddin can be classified as General Power of Attorney or it is special power of attorney.

8. It may be stated that power of attorney or letter of attorney is an authority whereby one "is set in the turn, stead or place of another" to act for him. The authority in writing is the power of attorney. The person authorized to do any lawful act in the stead of another is called the attorney or the donee of the power of attorney.

9. A power of attorney may be executed jointly by a number of persons as the principals. It may also be executed in favor of one person or a number of persons as the attorney or attorneys. A power of attorney is either general or special. A power of attorney in regard to a single transaction is known as a special power of attorney where the power authorizes the attorney to act generally or in more than one transaction it is known as a general power of attorney.

10. If the contents of the power of attorney dated 2-12-2002 executed by the defendants-respondents in favor of Sahabuddin are read, for all purposes it would be classified as general power of attorney because the power of attorney dated 2-12-2002

bears the words "general power of attorney" and not special power of attorney and apart from this, the same is not related to the one single transaction, but it relates to various cases pending in the Courts and thus, the power of attorney dated 2-12-2002 executed by the defendants- respondents in favor of Sahabuddin is classified as General power of attorney and the contention which was taken by the learned counsel for the respondents-defendants in the reply to the application dated 25-9-2003 that so it was a special power of attorney stands rejected. This is one of the aspects of the matter.

11. Similarly, in the present case, the general power of attorney dated 2-12- 2002 executed by the defendants-respondents in favor of Sahabuddin is written power of attorney and the same could not have been cancelled orally as stated by the defendants- respondents in their reply dated 14-10-2003 and thus, it appears that it was not cancelled in the manner as it should have been cancelled.

12. In the application dated 25-9-2003, the plaintiff-petitioner has nowhere stated that the compromise be attested and hence the observations of the learned Dist. Judge in rejecting the application stating that the pro forma of compromise could not be attested are erroneous one. This is another one of the aspects of the matter.

13. The simple case as put forward by the plaintiff-petitioner in his application dated 25-9-2003 is that she wanted to withdraw the suit as according to her compromise had taken place between the parties and on behalf of respondents-defendants Sahabuddin who is power of attorney-holder of respondents-defendants had compromised the matter.

14. Before proceeding further legal aspect on Order 23, Rule 1, C.P.C. as to in what manner a suit can be withdrawn has to be seen.

15. Normally, the plaintiff of a suit has absolute and unqualified right to withdraw from the suit. His liability is two-fold i.e. (i) to pay such costs as the Court may award and (ii) he is precluded from instituting any fresh suit in respect of that subject-matter under Rule 1(3). Excepting the twin liabilities, the right of the plaintiff to withdraw from a suit is absolute and unqualified.

16. Looking to the above legal position and other facts and circumstances mentioned above and taking into consideration the fact that in the application for withdrawal dated 25-9-2003, the plaintiff-petitioner has nowhere mentioned that the compromise dated 25-9-2003 executed between the parties be attested, therefore, it was nothing but

a simple application for withdrawal which was filed by the plaintiff-petitioner and through Sahabuddin on behalf of the respondents-defendants and hence the question of attesting the compromise could not have arisen and in view of that fact, the trial Court should have granted permission for withdrawal of the suit by simply saying that the permission for withdrawal of the suit is granted.

17. The learned counsel for the defendants-respondents has placed reliance on the decision in the cases of *TriyugiNarain Mishra v. M/s. Upasana Construction Pvt. Ltd. reported in* <sup>1</sup>and *Star Construction and Transport Co. v. The India Cements Limited reported in* <sup>2</sup>In my opinion, these authorities would not be helpful to the learned counsel for the defendants-respondents because in the present case there was no question of attesting the compromise. Apart from this, Hon'ble Supreme Court in the case of *ByramPestonjiGariwala v. Union Bank of India reported in* <sup>3</sup>has further observed that for the purpose of Order 23, Rule 1, C.P.C., the person includes counsel or agent of the party. Since Sahabuddin is power of attorney-holder of the respondents-defendants, therefore, he could be a party to the application for withdrawal of the suit.

18. The question whether Sahabuddin could make compromise on behalf of the defendants-respondents cannot be executed and decided in that suit and that matter is left open to be decided at appropriate time by appropriate Court because of the simple reason that the application for withdrawal of the suit was being simply allowed.

19. For the reasons mentioned above, the impugned order dated 6-5-2004 passed by the learned Additional Dist. Judge cannot be sustained and the same is liable to be quashed and set aside and this revision petition deserves to be allowed and application dated 25-9-2003 filed by the plaintiff-petitioner for withdrawal of the suit also deserves to be allowed.

Accordingly, the present revision petition is allowed and the order dated 6-5-2004 passed by the learned Additional Dist. Judge (Fast track), Parbatsar is quashed and set aside and the application dated 25-9-2003 filed by the plaintiff-petitioner for withdrawal of the suit is allowed and the permission is granted to the plaintiff-petitioner for withdrawal of the suit. However, it is made clear that the said withdrawal has no nexus with the compromise dated 25-9-2003 entered into between the parties.

Petition allowed.

Cases Referred.

1. 1999 (1) WLC (Raj) 128

2. 2001 WLC (SC) 206: (AIR 2001 SC 941)

3. AIR 1991 SC 2234