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Deepak Khosla and anr. Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Oct-08-2009

Reported in : 163(2009)DLT757

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Delhi High Court Rules - Rule 1; Code of Civil Procedure (CPC) - Orders 3, 29 and 30

Appeal No. : W.P.(C) 7651/2009

Appellant : Deepak Khosla and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Girish Pande, Adv. for R-1,; Krishnu Adhikary, Adv. and; Pr

Advocate for Pet/Ap. : Party-in-Perso

Judgement :

Pradeep Nandrajog, J.

1. Petitioner No. 1, who appears in person, has been heard.

2. The prayers made in the writ petition read as under:

(a) To issue a writ of Mandamus to Respondent No. 3 (Registrar of the Hon'ble High Court, acting as Secretary of its Rules Committee) to include in the Agenda of the very next meeting of the Rules Committee of the Hon'ble Delhi High Court a proposal for the amendment of the Delhi High Court Rules by way of incorporating detailed instructions within the body of the Rules on how vakalatnamas are to be executed, especially those relating to juristic entities.

(b) To issue a writ of Mandamus to Respondent Nos. 2 & 3 (acting through themselves or through their subordinate officers) that pending translation of prayer (a) into the relevant incorporation of the same into the body of the Delhi High Court Rules, to object to the filing any motion by any party in judicial proceedings before the Hon'ble High Court if the vakalatnama accompanying it has not been executed by the party concerned in the manner laid down in law when read with the judgment of the Hon'ble Supreme Court passed in the case of Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. : AIR 2006 SC 269, and to return the same and not to post it before the Hon'ble court concerned till the deficiencies are rectified.

(c) To issue a writ of Mandamus to Respondent No. 2 (acting through themselves or through their subordinate officers) that pending translation of prayer (a) into the relevant incorporation of the same into the body of the Delhi High Court Rules, to circulate instructions similar to (b) to all the Courts subordinate to the administrative charge of the Hon'ble Chief Justice of the Hon'ble Delhi High Court.

(d) Award costs for this petition.

(e) And pass such other order(s) or direction(s) or further orders or directions as this Hon'ble Court may deem fit and proper under the circumstances of the case.

3. Eschewing reference to the prolix pleadings in the writ petition, crystallizing the same, the grievance of the petitioners is to the casual manner in which vakalatnamas and/or authorization are being filed by learned Members of the Bar before various Courts, Tribunals and Authorities. The petitioners have highlighted instances of confusion and the process of the law being abused or trial being delayed on account of clumsy filing of vakalatnamas by learned Members of the

Bar.

4. Learned Counsel for the respondents do not dispute the importance of a vakalatnama filed by Members of the Bar authorizing them to act and plead on behalf of their clients.

5. Indeed, Order III of the Code of Civil Procedure contains the legislative provisions how appearance have to be entered on behalf of the parties by recognized agents or by their counsel.

6. Pertaining to juristic persons, Order 29 and Order 30 of the Code of Civil Procedure further guides, as to in what manner living persons can act on behalf of corporate and juristic entities.

7. Fortunately for us, in the decision reported as AIR 2006 SC 269 Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. in Para 21 of the said decision, the Supreme Court noted as many as 9 deficiencies noticed by their Lordships of Supreme Court, in vakalatnama filed by learned Members of the Bar.

8. The complication at later stages which can be avoided by a timely check and proper verification of vakalatnamas have been noted by their Lordships.

9. Para 21 of the decision in Uday Shanker's case (Supra) reads as under:

21. We may at this juncture digress and express our concern in regard to the manner in which defective Vakalatnamas are routinely filed in courts. Vakalatnama, a species of Power of Attorney, is an important document, which enables and authorizes the pleader appearing for a litigant to do several acts as an Agent, which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled/attested/accepted with care and caution. Obtaining the signature of the litigant on blank Vakalatnamas and filling them subsequently should be avoided. We may take judicial notice of the following defects routinely found in Vakalatnamas filed in courts:

- (a) Failure to mention the name/s of the person/s executing the Vakalatnama, and leaving the relevant column blank;
- (b) Failure to disclose the name, designation or authority of the person executing the Vakalatnama on behalf of the grantor (where the Vakalatnama is signed on behalf of a company, society or body) by either affixing a seal or by mentioning the name and designation below the signature of the executant (and failure to annex a copy of such authority with the Vakalatnama).
- (c) Failure on the part of the pleader in whose favour the Vakalatnama is executed, to sign it in token of its acceptance.
- (d) Failure to identify the person executing the Vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the Vakalatnama.
- (e) Failure to mention the address of the pleader for purpose of service (in particular in cases of outstation counsel).
- (f) Where the Vakalatnama is executed by someone for self and on behalf of someone else, failure to mention the fact that it is being so executed. For example, when a father and the minor children are parties, invariably there is a single signature of the father alone in the Vakalatnama without any endorsement/statement that the signature is for 'self and as guardian of his minor children'. Similarly, where a firm and its partner, or a company and its Director, or a Trust and its trustee, or an organisation and its officebearer, execute a Vakalatnama, invariably there will be only one signature without even an endorsement that the signature is both in his/her personal capacity and as the person authorized to sign on behalf of the corporate body/firm/society/organisation.
- (g) Where the Vakalatnama is executed by a power-of-attorney holder of a party, failure to disclose that it is being executed by an Attorney-holder and failure to annex a copy of the power of attorney;
- (h) Where several persons sign a single vakalatnama, failure to affix the signatures seriatim, without mentioning their serial numbers or names in brackets.

(Many a time it is not possible to know who have signed the Vakalatnama where the signatures are illegible scrawls);

(i) Pleaders engaged by a client, in turn, executing vakalatnamas in favour of other pleaders for appearing in the same matter or for filing an appeal or revision. (It is not uncommon in some areas for mofussil lawyers to obtain signature of a litigant on a vakalatnama and come to the seat of the High Court, and engage a pleader for appearance in a higher court and execute a Vakalatnama in favour of such pleader).

We have referred to the above routine defects, as Registries/ Offices do not verify the Vakalatnamas with the care and caution they deserve. Such failure many a time leads to avoidable complications at later stages, as in the present case. The need to issue appropriate instructions to the Registries/Offices to properly check and verify the Vakalatnamas filed requires emphasis. Be that as it may.

10. We agree with the submissions urged by petitioner No. 1 that the time has come, when a judicial order needs to be passed, directing the Registry of this Court as also the Courts, Authorities, Tribunals and Foras in Delhi to ensure proper scrutiny of vakalatnamas.

11. Mandamus as sought by the petitioners need not be issued for the reason, the mandate of law, pertaining to the manner in which vakalatnamas have to be executed is clear. What is needed is, directions to the Registry of this Court, the Courts subordinate to this Court and the Tribunals and Foras in Delhi that proper scrutiny of vakalatnamas filed should be effected and vakalatnamas which are not properly executed be not taken on record.

12. Pertaining to vakalatnamas executed not by the Principal himself but by some person claiming to appoint or give authority on this behalf, Rule 1, Part-A of Chapter 16 of the Delhi High Court Rules, inter alia, stipulates: (1) Proof of attorney to act to be executed by the principal 'Every appointment of a pleader to act shall contain in full the name of the person, or, where there are more than one, of every person who thereby appoints the pleader to act on his behalf, and shall be executed by every such person. (2) Proof required 'when power of attorney not

executed by the principal' When such appointment or power is not executed by the principal himself, but by some person claiming to appoint or give authority on his behalf, the pleader will not be recognized by the Court without proof that such person was duly authorized by the principal to execute such appointment or power'.

13. We direct that henceforth while scrutinizing the vakalatnamas filed, be it in the Registry of this Court, the Subordinate Courts in Delhi or the Tribunals, Authorities and Foras in Delhi, failure/defect in the vakalatnamas, noted in sub paras 'a' to 'e' of Para 21 of the decision of the Supreme Court in Uday Shankar's case (supra), shall be treated as a deficiency in the execution of the vakalatnamas making liable the said vakalatnama to be returned. Further, in the situation contemplated by sub paras 'f' to 'i' of Para 21 of the decision in Uday Shankar's case (supra), vakalatnamas not executed in the manner indicated in the said sub paras shall also be treated as a deficiency in the execution of the vakalatnama, making liable said vakalatnama to be returned.

14. We are passing the directions in public interest for the reason even we have come across vakalatnamas which are filed in a most lackadaisical manner. Many a times, precious judicial time is lost in determining whether a proper representation is being made under a proper authority.

15. The writ petition stands disposed issuing a mandamus in terms of para 12 above.

16. The Register General of this Court is directed to make available a copy of this order to the Registry of this Court and to forward a copy thereof to all the District Judges in Delhi with a direction that strict compliance should be made with the letter and spirit of the law and our directions pertaining to execution of vakalatnamas. Similarly, to the Registrars of the Tribunals and Foras functioning in Delhi, a copy of this order may be sent for compliance.

17. No costs.

18. Copy of this order may be supplied dasti to the petitioners on payment of usual charges.

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