*** HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

+ C.R.P.No.1621 of 2015

% 17-06-2015

Dasam Vijay Rama Rao

….Petitioner

And

$ M. Sai Sri

…. Respondent

! Counsel for the Petitioner: Sri D. Madhava Rao

^ Counsel for the Respondent: ---

<Gist :

>Head Note:

? Cases referred:

1. [2009] 151 Comp Cas 51 (AP)
2. 1995 (3) ALD 341 (DB)

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No.1621 of 2015

ORDER:

This revision has been preferred by the 2nd petitioner in Family

Court O.P.No.1547 of 2014, Family Court, Ranga Reddy District at L.B.Nagar. The sole respondent herein is the 1st petitioner in the above O.P.

The petitioner herein is the husband and the respondent is his wife. Both of them have filed the aforesaid O.P.No.1547 of 2014 under Section 13-B of Hindu Marriage Act, 1955, for dissolution of their marriage performed on 22.08.2010 by a decree of divorce by mutual consent.

The case of the petitioners in the O.P. was that they are both Hindus by religion and faith and got married on 22.08.2010 at Dwaraka Tirumala, West Godavari District, Andhra Pradesh, as per Hindu rites and customs and they initially lived at Jeedimetla, Hyderabad, and later on, in Australia where the 2nd petitioner was employed and that certain differences have cropped up between them, which could not be reconciled in spite of the best efforts made by the petitioners themselves, friends, well-wishers and elders of the families of both the petitioners. The petitioners, all due to incompatibility between them had realized that their marriage has broken down irretrievably and hence, both of them have taken a decision and agreed to have the marriage dissolved by mutual consent. Hence, they filed the O.P. before the Family Court, Ranga Reddy District.

The 1st petitioner in the O.P., who is the respondent herein, has been attending to the proceedings by appearing before the Family Court. However, the father of the 2nd petitioner, who holds the General Power of Attorney (GPA) of the 2nd petitioner/husband in the O.P., filed an interlocutory application bearing SR.No.2216 of 2015 on 09.04.2015 before the Family court to receive the chief affidavit of PW.2/petitioner No.2, duly dispensing with the personal appearance of the 2nd petitioner before the Family Court. The

2nd petitioner has sworn to a detailed affidavit and got it notarized by a

notary public of South Melbourne, Australia. That interlocutory application has been returned with a cryptic order dated 09.04.2015, which reads as under:

"Petition is returned as not maintainable."

It is against this order the present revision is filed.

Since no reasons are assigned why the learned Judge of the Family Court came to the conclusion that the petition is not maintainable, the reasons are solicited. The learned Family Court Judge, Ranga Reddy District, in her communication dated 28.04.2015 addressed to the Registry has set out that the O.P. was moved on 08.10.2014 and it was posted to 09.04.2015 for appearance of both parties after six months and that since the

1st petitioner was present and the 2nd petitioner was not present, the matter was posted to 22.04.2015 and that on 22.04.2015, the counsel for the 2nd petitioner filed a chief affidavit of PW.2, which was notarized in Australia and on that day neither the GPA Holder of the 2nd petitioner nor the 2nd petitioner was present and hence, the same is returned.

Apparently, since the Court could not enquire from the parties about their subsisting consent for granting divorce by mutual consent, the I.A. moved by the 2nd petitioner appears to have been returned on 09.04.2015, but not on 22.04.2015. It would have been better for the learned Judge to have spelt out the reasons for her conclusion.

The respondent/wife herein, who is the 1st petitioner in O.P., was present before this Court. She appears to be fairly very clear that the marriage between her and the 2nd petitioner in the O.P. is required to be dissolved. She does not appear to be having any doubts in that regard. I have also no doubt in my mind that the respondent herein has any second thoughts about dissolution of her marriage with the 2nd petitioner in the O.P. She was also clear that there is no necessity to cross-

examine the 2nd petitioner in the O.P. with regard to the contents of the affidavit sought to be filed by him, as the contents are virtually the same as are narrated in the O.P. itself.

From the report of the learned Judge of the Family Court, I could gather that two factors obviously weighed on her mind. One is whether a GPA holder can represent a party in Family Court O.P. and also depose on behalf of his principal.

I had an occasion to consider the question as to whether a power of attorney holder can be examined as a witness in a legal proceeding, while deciding on 15.04.2009 a company case between **Smt. K.Padmasree Vs. Lotus Aluminium P. Ltd.**[1], and held as under:

> "Learned counsel for the Respondent Sri D. Srinivas, placed reliance upon the Judgment rendered by a learned single Judge of this Court in K. BHARATHY, GUDIVADA AND ANOTHER v. AUTHORITY UNDER SECTION 50 OF A.P.S.E. ACT- CUM-LABOUR OFFICER, MACHILIPATNAM AND ANOTHER (1999 (3) ALD 420) and contended that no person holding a Power of Attorney can examine himself as a witness and hence, the evidence brought on record through the Special Power of Attorney holder, viz., PW-1 should be eschewed and since the petitioner has not examined herself, the above petition should be dismissed.
>
> Hence, the question as to whether a Power of Attorney holder can be examined as a witness requires a deeper consideration.
>
> The expression "Power of Attorney" has been defined in the Strouds Judicial Dictionary as an authority whereby one "is set in the turn, stead, or place of another" to act for him. It is generally made by deed poll, but semble, may be by writing unsealed. In the Blacks Law Dictionary; as An instrument granting someone authority to act as agent or attorney-in-fact for the grantor. In The Words and Phrases - Permanent Edition - as: The term "power of attorney" indicates a power or authority under seal. A "power of attorney" is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. "Power of attorney" is not contract, but is merely document evidencing to third parties existence of agency relationship and powers of agent. In Corpus Juris Secondum it is stated as; Authority may be conferred on an agent by a written appointment, and if the writing is formal the authority is said to be conferred by letter of attorney and the agent is, an attorney in fact. And in Advanced Law Lexicon as A formal instrument by which one person empowers another to represent him or act in his stead for certain purposes. "Power of Attorney" includes any instrument (not chargeable with a fee under the law relating to Courtfees for the time being in force) empowering a specified person to act for and

in the name of the person executing it. American Jurisprudence, noted that, a person may properly appoint an agent to do the same acts and to achieve the same legal consequences by the performance of an act as if he had himself personally acted, unless public policy or the agreement with the principal requires personal performance – Mc Nulty v. Dean (154 Wash. 110). It was further noted that, the grant of power is not, however, to be frittered away by very nice and metaphysical distinctions; the object and purposes of the parties must always be kept in view, and, where the language will permit, that construction should be carried out that will support instead of defeat the purposes of the instrument - Holladay v. Daily (19 Wall. (U.S.) 606).

It will be relevant to notice that the donee of a power of attorney, acts on behalf of his/her Principal, hence, the power of attorney is a Special Power of agency, normally, deriving power for the purpose of managing, buying or selling real and personal property or for purposes of carrying on business or for the purpose of securing loans, leases, mortgages and for making investments and for securing insurance cover and also for the purpose of suing and to be sued. Thus, a host of functions, which are otherwise normally liable to be performed in an individual capacity by a particular person, called as Principal, are granted to be performed by another person in the capacity as the agent of such a Principal. This grant of power in writing is what has come to be constituted and recognized as the Power of Attorney. To render the Principal to be bound by all such actions of his agent and with a view to secure the execution of instruments and their sealing, to become lawful and also further to avoid any doubt as to the liability of a donee of a power of attorney, who makes the payments in good faith after the donor of the power of attorney has died or becomes lunatic or becomes insolvent or has revoked the said power, when the fact of such death, lunacy, insolvency or revocation, was not known to the donee at the time of making such payments, the Power of Attorneys Act, 1882, has been made. By granting such power, the donor has notified in rem that he has authorized and granted necessary power to a donee to do all such acts as are required to be performed by him, and when so performed by such donee, the donor, therefore, irrevocably undertakes to ratify all such actions of the donee. Hence, the power of attorney holder can act on behalf of his Principal without any reservations. It would help the Principal to perform all such acts and functions through such an agent, in his own interest.

Section 2 of the Powers-of-Attorney Act, 1882, has dealt with this aspect of the matter in the following manner:

2. Execution under power-of-attorney.-The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the Power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof".

Then, what are those acts and actions, which the holder of a power of attorney can perform?

For this purpose one has to bear in mind the distinction between all such actions, which are liable to be performed by a

person in his individual capacity as distinct from those, which are liable to be performed in exercise of a Statutory duty or function or such actions, which are liable to be regulated by a Statute itself.

A Full Bench of the Madras High Court in M. KRISHNAMMAL V. T. BALASUBRAMANIA PILLAI (AIR 1937 Mad 937), speaking through the Chief Justice Beasley, has clearly pointed out that a power of attorney holder cannot plead on behalf of his Principal in the following words:

".....and he claimed that the power of attorney was of the same force and validity as that of a vakalat and that, unless it was revoked by formal proceedings through Court, no orders could be passed on the petition. Therefore, by reason of the authority given to him in the power of attorney, he claimed the same right as a legal practitioner who has been given a vakalat; and since the power of attorney authorizes him to plead in Court, it follows that he claims that right; and indeed we are informed that either in these proceedings or in some other, Lakshmana Rao, J. allowed him to address the Court. In view of the claim put forward by the respondent in the affidavit referred to, the Master posted the matter before Gentle, J. for orders and he has referred the matter to us and it has been fully argued here by the learned counsel for the petitioner, Krishnammal, the Bar Council, the Advocates' Association and the Attorneys' Association; and we have also heard the respondent in person.

We may say at once that there is an unreported Bench decision of this High Court directly in point on the first question in C.M.P. No. 498 of 1911, where it was held by Benson and Sundara Ayyar, JJ. that a right to appear in Court for his principal given to a recognized agent by Order 3, Rules 1 and 2, Civil P. C, does not include a right to plead, that it means simply that one can take proceedings to submit oneself to jurisdiction that the High Court has under the Letters Patent and the Legal Practitioners' Act and under Sections 119 and 122, Civil P. C, power to make rules as to who shall plead for parties before the High Court in its original and appellate jurisdiction and in the lower Courts, that Section 10, Letters Patent, makes provision with regard to who alone can plead before the High Court and that others such as recognized agents cannot have the right to plead. There are also two decisions of the Calcutta High Court upon this point, viz. Harchand Ray v. B.N. Ry. Co., (1916) 3 AIR Cal 181 and In re Eastern Tavoy Minerals Corporation, Ltd., (1984) 21 AIR Cal 563. In the former, a recognized power of attorney agent claimed a right to plead in Court on behalf of his principal under Order 3, Rule 1, Civil P.C., but it was held by Jenkins, C.J. and Chaterjea, J. that he had no right of audience; and in the latter ease, a director of a company holding a power of attorney, authorizing him to appear for and on behalf of the company, to conduct and represent the company in the proceedings, claimed the right of audience on behalf of the company and, applying the ruling in the former case, it was held that he had no right of audience. It is plain from these three cases that Rules 1 and 2 of Order 3, Civil P. C, do not give the recognized agent any right to plead in Court on behalf of his principal either in the appellate or Original Sides of the High Court....."

The Full Bench had approvingly noticed the two earlier judgments rendered by the Calcutta High Court reported in

HARCHAND RAY V. B.N. RY. CO., (AIR 1916 Cal 181) and EASTERN TAVOY MINERALS CORPORATION, LTD., In re, AIR 1934 Cal 563, in this context. The Andhra Pradesh High Court in HARI OM RAJENDER KUMAR AND OTHERS VS.CHIEF RATIONING OFFICER OF CIVIL SUPPLIES, A.P., HYDERABAD (AIR 1990 AP 340), held as follows:

"5. Both American and English Courts have adopted the doctrine that a non-lawyer may not appear in Court to represent another person. Outside the court-house, non-lawyers in earlier periods of Armerican history freely performed tasks that today would be called the unathorised practice of law. That general pattern still obtains in England and other countries in Europe where there has been never a prohibition against non-lawyers performing such legal functions as giving legal advice or preparing some kinds of legal documents.

13. Now, the Advocates Act, 1961, which is an Act to amend and consolidate the law, repeals the above provisions of the Letters Patent and parts of the Legal Practitioners Act. Section 32 of the Advocates Act uses the word 'appear' while Sees. 29 and 33 use the expression 'Practice'. The word 'Practice' includes both acting and pleading, and takes in all the normal activities of a legal practitioner. Though Sec. 33 of the Advocates Act uses the word 'Practice', we are here concerned with the word 'appear' used in S. 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. In Sornam's case, while observing that he can 'appear' or 'act' Natesan, J. observed (p. 211).

"As a recognised agent, he can have appearance and he can act; now he wants also to plead the cause before the Court, that is factually to practice the profession of law."

14. Natesan, J, also stated that the Supreme Court in Aswini Kumar Ghosh v. Arabinda Bose (AIR 1952 SC 369 at 375), approved the meaning given to the word 'practice' by Kumaraswami Sastry, J. in the Full Bench case in Re-Powers-of-Advocates, (1929) ILR 52 Mad 92 : 55 MLJ 551 : (AIR 1928 Mad 1182), to the following effect :--

"the word 'Practice' means appear, act, and plead, unless there is anything in the subject or context to limit its meaning."

15. Therefore the word 'appear' is only one aspect and does not take in the concept of 'pleading' without which; it cannot be equated to 'practising'. In Thayarammas case, (AIR 1937 Madras 937), also it was stated that 'Practice' means drafting, engrossing, filing plaints, Judge's summons, affidavits and generally issuing legal process, and all that a legal practitioner does. Even one isolated act has, in England, been held to constitute 'acting as a solicitor' rendering persons guilty of such conduct liable to be dealt with under Sec. 26 of the Solicitors Act, I860 for contempt of Court (In Re Ainsworth, Ex parte Incoporated Law Society, 1905 KB 103) .....

16. What the power-of-attorney agent in this case seeks to do is the same as in Tayarammal and Sornam cases -- He wants to be placed in the same position as an advocate; in respect of not merely drafting and filing cases but pleading and arguing in Court. ..... It is clear therefore, that his acts amount to 'practising' the profession of law. In fact, the power-of-

attorney is executed in 1987 permitting the agent to file, plead and argue all cases of the principals in future and the deed is not confined to this or any particular case. Though this Court has power to grant permission for non-lawyers to plead/argue cases in certain special circumstances, the present case is obviously not one such. Under the guise of seeking permission in each case, the petitioner is continuously pleading and arguing every case for the principals who are Dal Mill owners^ and in a routine fashion, on the sole ground that the principals have decided never to engage any lawyers before any Court or tribunal. The parties are not seeking permission on any special grounds applicable to this case alone. They obviously want to engage the agent in all cases where normally lawyers should have been engaged. That clearly is hit by S. 33 of the Advocates Act."

In the context of Section 2 of the Powers of Attorney Act, 1882, it is of importance to notice the following statement of law, (made by Full Bench), in Re. The powers of newly enrolled Statutory Advocates under the Indian Bar Councils Act:

"..... I am of opinion that where an Act confers rights to a party in general terms and entitles him to perform more than one function, the cutting down of those rights by a rule would make that rule repugnant to the provisions of the Act. The following observations of Wills,J., in Reg. V. Bird Needes Ex parte - [1898] 2 Q.B 340 = 67 L.J.Q.B. 618 = 14 T.L.R. 384 = 62 J.P. 422 = 46 W.R. 528 = 79 L.T. 156 are in point:

I desire in my judgment to adopt a broad principle which is too clear to need cases to be cited for its justification - the principle that where a power to make regulations is given to a public body by statute, no regulations made under it can abridge a right conferred by the statute itself."

In fact, the Supreme Court had authoritatively pronounced its disapproval of allowing the powers of Attorney Holders to plead on behalf of their Principals. The Supreme Court in HARISHANKAR RASTOGI v. GIRDHARI SHARMA AND ANOTHER (AIR 1978 SC 1019) has set out as to the undesirable effects that are beset in allowing a Power of Attorney holder to plead. Once again the Supreme Court had set at rest all speculative aspects relating there to in T.C.MATHAI v. DISTRICT AND SESSIONS JUDGE, THIRUVANANTHA-PURAM, KERALA (1999 3 SCC 614), in the following passages:

8. The work in a Court of law is a serious and responsible function. The primary duty of criminal Court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal Court who becomes the pleader of the party. In the adversary system, which is now being followed in India, both in civil and criminal litigation, it is very necessary that the Court gets proper assistance from both sides.

9. Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the Court to appoint such persons to represent him in Court. Section 30 of the Advocates Act confers a right on

every advocate whose name is entered in the roll of advocates maintained by a State Bar Council to practise in all the Courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any Court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. Bar is one of the main wings of the system of justice. An advocate is the officer of the Court and is hence accountable to the Court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

10. But if the person proposed to be appointed by the party is not such a qualified person the Court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for the parliament for fixing such a filter in the definition clause [Sec. 2 (q) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the Court, is to enable the Court to verify the level of equipment of such person for pleading on behalf of the party concerned.

11. V. R. Krishna Iyer, J. had occasion to deal with a similar matter while considering a plea like this in a chamber proceeding in the Supreme Court. In that case, a party sought permission to be represented by another person in a criminal case. Learned Judge then struck a note of caution in the following terms in Harishankar Rastogi v. Girdhari Sharma, AIR 1978 SC 1019 (Para 3) :

"If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the Court may receive counter-productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadly private representatives fling arguments at the Court. Likewise the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the Court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice."

12. Appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

……

14. Under the English Law, "every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right", [videJackson and Co. v. Napper - (1886) 35 Ch. D. 162 at page 172]. But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation, [vide Rayulu Subba Rao v. Commr. of Income-tax, Madras, AIR 1956 SC 604].

……..

……..

……..

……..

In all these cases what has not been allowed to be done or performed by a Power of Attorney holder is, to seek the right of audience in a Court, while at the same time allowing him to sue or be sued on behalf of his principal. From times immemorial, the right of audience in formal court proceedings is granted in favour of a class of trained professionals, who were known as Pleaders or Lawyers or Attorneys. After the advent of the Advocates Act, 1961, the right of audience in formal court proceedings is liable to be confined only to the professional class of advocates, who are admitted as Members and enrolled as such on the rolls by the Bar Council concerned. Therefore, grant of permission for audience is liable to be confined in favour of such class, but not otherwise.

However, the conventional viewpoint that was holding field was that, a party could enter appearance and solicit the right of audience for himself. Our legal system is not allergic to receive the submissions of a party-in-person. Therefore, a party, whether well versed or not, in legal matters and whether trained or not, can enter appearance of himself and seek to be heard, by a Court. That is not forbidden. To this day, right up to the highest Court of our land, some parties, who are confident of their articulative abilities enter appearances on their own and are heard with the same kind of attention a professional lawyer is paid. But however, the holder of a Power of Attorney, being not a party himself, but merely an agent of another person, cannot seek such right of audience. Pleading in formal court proceedings is an aspect, which is now regulated by a Statute. The right to instruct a Lawyer or an Attorney and to settle the pleadings in writing or to affix the verifications for the general truth of the averments is not a prohibitory exercise, but is a legitimate exercise liable to be carried on by an agent. Therefore, the power of attorney holders have always been accorded the necessary permission to set forth the pleadings on behalf of their Principals. An agent is always allowed and permitted to make and set forth the pleadings on behalf of his Principal in India. Therefore, deposing on behalf of the Principal in a Court being part of exercise of tendering evidence is not a forbidden exercise to be indulged in by an agent. Such persons are entitled to be cross-examined as the act and art of cross-examination being essentially to ascertain the veracity of the statements/submissions made by a witness and in that process, extract the whole of the truth. Section 18 of the Evidence Act, clearly permits and allows evidence to be collected even from an agent. Therefore, the contention canvassed by the learned counsel for the Respondent placing reliance upon a judgment in K. BHARATHY, GUDIVADA AND ANOTHER case cited (1 supra), is not tenable. It is altogether a different thing that a Power of Attorney holder is not liable to be granted permission to plead in a Court, which is an exercise, regulated by Section 32 of the Advocates Act, while the act of deposing as a witness on behalf of the Principal, is not such a regulated exercise. Therefore, the correct way to understand the judgment in K. BHARATHY, GUDIVADA AND ANOTHER case cited (1 supra) is that the power of attorney holder is not entitled to plead on behalf of the Principal, but he can only lead evidence or settle the

pleading in the form of a plaint or written statement or petition."

In view of the above clear cut pronouncement, it is evident that a GPA holder can depose and also lead evidence on behalf of his principal.

Learned Family Court Judge also appears to have entertained an apprehension as to whether the Family Court can entertain an application presented by a legal practitioner in view of the provision contained in Section 13 of the Family Courts Act, 1984.

From the very preamble of the Family Courts Act, 1984, one would gather that every endeavour is required to be made by the Family Court to assist the parties in arriving at a speedy settlement of disputes relating to the marriage and/or family affairs. That explains the reason Section 9 of the said Act provided for an appropriate legal environment for settlement of the disputes in an amicable manner. The parties are not only required to be assisted, but also required to be persuaded by the Judge in arriving at a settlement while keeping in view the importance of protecting and preserving the institution of the marriage between the parties. To the extent possible, the Family Court is required to utilize its skills and wisdom gained over long period of time by careful study of the ills of the society and then finding suitable cure for them and hence, the Family court must try to bring about a reconciliation of the disagreements persisting between the parties. However, when two parties to a marriage come before a Family Court and ask for dissolution of their marriage by mutual consent under Section 13-B of Hindu Marriage Act, 1955, the Court is required to adjourn the motion moved by both parties by a period not earlier than six months, as per sub Section 2 of Section 13-B of the Hindu Marriage Act. Further, Sub Section 2 requires that the Court shall, on being satisfied, after hearing the parties and after making <u>such enquiry as it thinks fit</u> with regard to the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of such decree. Therefore, there may have been a genuine

apprehension in the mind of the Family Court Judge as to whether there is any possibility of reconciliation between the parties or change of mind with regard to consent expressed earlier for such dissolution, when the petition is returned by it.

Keeping the very object behind the Family Courts Act, 1984, read with the spirit behind Section 13-B of the Hindu Marriage Act, the Family Court could have entertained the interlocutory application in as much as legal practitioners are not totally forbidden from rendering assistance to the Family Court. One of the reasons why Section 13 of the Family Courts Act, 1984, declared that no party to a suit or proceeding shall be entitled as of right to be represented by a legal practitioner sans technicalities or legal necessities, the parties must be helped by the Court to reconcile the disputes persisting between them. Unlike a traditional setup of the Court, where the Presiding Judge has to maintain not only an equiy distance between the parties to a *lis*, but also maintain a sense of impartiality towards the cause of both sides and essentially was required to maintain an arms length distance from the parties, in a Family Court, the Judge is donning the robes of a facilitator, a mentor and an expert counselor. A slight tilt in the approach to one of the parties in a Family Court, depending upon the facts and circumstances prevailing in the case and if the ends of justice would be better served by dosing so, is allowable. The emphasis being laid upon essentially preserving the institution and interest of the marriage and the welfare and wellbeing of the parties etc. Hence, the Family Court is entitled to receive, examine and act upon an affidavit filed by one of the parties before it, acting through a GPA. A petition moved in that regard is maintainable. I am in fact supported in my view, by the ruling in **Mrs. Padmakiran Rao v. B. Venkataramana Rao**[2], the Division Bench of this Court held as under:

> "As required by sub-section (2) of Section 13-A, the petition was posted for enquiry on 25-6-1994 i.e., after six months. At the enquiry the appellant herein (wife) examined herself and she reiterated her desire to get divorce. However, the respondent could not be present as he is residing in United States. At the same time, an affidavit signed on 22nd February

1994 and affirmed in the presence of a notary public was filed by the respondent. The respondent made it clear that the marriage had irretrievably broken down, that there are no mutual obligations or claims against each other and sought an order dissolving the marriage.

Relying on the wording - "after hearing the parties" in Sub-section (2) of Section 13-B, the learned Subordinate Judge took the view that both the parties to the marriage should necessarily be present in the Court for examination and the filing of affidavit will not be a substitute for that requirement. The learned Judge observed that unless the parties are personally present, it would be difficult for the Court to assess whether they have changed their mind since the date of filing the petition. We do not think that this is a correct view to be taken. 'Hearing' does not necessarily mean that both parties have to be examined. The word 'hearing' is often used in a broad sense which need not always mean personal hearing. In any case, the evidence of one of the parties i.e., the appellant herein was recorded by the Court. Thus, even if the word 'hearing' is construed in a literal sense that requirement must be deemed to have been satisfied in the instant case in view of the examination of the appellant. On the husband's side, there is evidence in the form of an affidavit which can be legitimately taken into account in view of Order XIX Rule 1 C.P.C. It is not as if the affidavit has been doubted or the other party wanted to cross-examine the deponent of the affidavit. When there are no suspicious circumstances or any particular reason to think that the averments in the affidavit may not be true, there is absolutely no reason why the Court should not act on the affidavit filed by one of the parties."

I am, therefore, of the opinion that the Family Courts are entitled to ascertain the views of the parties and for that purpose adjourning a case by a reasonable period is not to be frowned upon. But, however, if one of the parties, like in the present case, appears before the Family court and expresses no objection for an affidavit of the other party to be taken on record and is not desirous of cross examining the deponent of the affidavit, the Family Court cam entertain, unhesitatingly any such move/application.

Increasingly Family Courts have been noticing that one of the parties is stationed abroad. It may not be always possible for such parties to undertake trip to India, for variety of good reasons. On the intended day of examination of a particular party, the proceedings may not go on, or even get completed possibly, sometimes due to pre-

occupation with any other more pressing work in the Court. But, however, technology, particularly, in the Information sector has improved by leaps and bounds. Courts in India are also making efforts to put to use the technologies available. 'Skype' is one such facility, which is easily available. Therefore, the Family Courts are justified in seeking the assistance of any practicing lawyer to provide the necessary skype facility in any particular case. For that purpose, the parties can be permitted to be represented by a legal practitioner, who can bring a mobile device. By using the skype technology, parties who are staying abroad can not only be identified by the Family Court, but also enquired about the free will and consent of such party. This will enable the litigation costs to be reduced greatly and will also save precious time of the Court. Further, the other party available in the Court can also help the Court in not only identifying the other party, but would be able to ascertain the required information. Accordingly, I direct the Family Court to entertain the I.A. as it is maintainable and permit the GPA of the 2nd petitioner in O.P. to represent and depose on behalf of the 2nd petitioner in the O.P. and the Family Court shall also direct such GPA or any legal practitioner chosen by him to make available the skype facility for the Court to interact with the 2nd petitioner, who is staying at Melbourne, Australia and record the consent of 2nd petitioner and proceed with the matter thereafter as expeditiously as is possible.

Accordingly, the civil revision petition is allowed. No order as to costs.

Consequently, the miscellaneous petitions, if any pending shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

17.06.2015
Note: L.R. Copy to be marked
(B/o)
ska

[1] [2009] 151 Comp Cas 51 (AP)

[2] 1995 (3) ALD 341 (DB)