

Court No. -20

Case :- CONSOLIDATION No. - 534 of 2002

Petitioner :- Syed Wasif Husain Rizvi

Respondent :- Hasan Raza Khan And 6 Others.

Counsel for Petitioner :- S.H.I. Naqvi, R.K. Upadhyay, R.S. Chauhan, Zishan Ahmad

Counsel for Respondent :- C.S.C., Ajmal Khan, G.M. Kamil, Mohd. Aslam Khan, R.K. Upadhyay, R.N. Gupta, S.K. Shukla

Hon'ble Ram Surat Ram (Maurya),J.

1. Heard Sri R.S. Chauhan, for the petitioner and Sri Ajmal Khan, for the contesting respondents.

2. The counsel for the respondents, relying upon Division Bench judgments of this Court in **Dr. Prabhu Nath Prasad Gupta Vs. State of U.P. and others, 2003 (4) AWC 3010** and **Gurmeet Kaur Kwatra Vs. Vice Chairman, Varanasi Development Authority, 2010 (28) LCD 1 (DB)** raised preliminary objection and submitted that writ petition has been filed by Mohd. Shafi, claiming himself as Power of Attorney holder of Syed Wasif Husain Rizvi (the petitioner), is not maintainable and is liable to be dismissed.

3. I have considered law laid down in the aforementioned cases. I respectfully disagree. Section 1-A of Power of Attorney Act, 1882 (as amended by Act No. 55 of 1982) defines "Powers-of-Attorney" include any instrument empowering a specified person to act for and in the name of the person executing it. Section 2 provides for execution of Power-of-Attorney as 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 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.

4. Thus there is statutory provision, which authorizes a person to empower another person to act for and in the name of the person executing it. Order VI Rule 14 C.P.C. permits Power of Attorney holder to verify and sign the pleading as held by Supreme Court in **Purushottam Umedibhai Co. Vs. Manilal and sons, AIR 1961 SC 325**. Through Power of Attorney, Government Departments, Corporations, Companies and Firms used to discharge their

function smoothly. There could be no reason for not permitting to file writ petition through Power of Attorney holder, if law of land permits for doing so. Division Benches have not taken notice of statutory provisions. In such circumstances, matter requires to be considered by a larger Bench.

5. Let the papers of this case be placed before Hon'ble Chief Justice/Senior Judge, for constituting suitable Bench for consideration of following question:-

“Whether writ petition under Article 226 of the Constitution can be filed by Power of Attorney holder?”

Order Date :- 2.12.2015

Rahul/-