Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Anr on 10 November, 2005

Equivalent citations: AIR 2006 SUPREME COURT 269, 2006 (1) SCC 75, 2005 AIR SCW 5851, 2006 (1) AIR JHAR R 219, 2005 (8) SLT 330, 2005 (9) SCALE 302, (2005) 9 JT 454 (SC), 2006 (1) JLJR 24, 2006 (1) HRR 79, 2006 SCFBRC 1, (2005) 4 KHCACJ 424 (SC), 2005 (3) BLJR 2314, 2005 (9) JT 454, 2006 (2) SRJ 114, (2006) 2 ALLMR 184 (SC), (2006) 1 JCR 24 (SC), 2006 HRR 1 79, (2006) 37 ALLINDCAS 942 (SC), 2005 BLJR 3 2314, (2005) 6 ANDH LT 723, (2006) 1 MAD LJ 192, (2006) 1 MAD LW 769, (2006) 1 PAT LJR 49, (2006) 1 PUN LR 673, (2005) 2 RENCR 637, (2006) 100 REVDEC 253, (2006) 1 ICC 625, (2005) 9 SCALE 302, (2006) 1 ALL RENTCAS 1, (2006) 2 CIVLJ 456, (2006) 101 CUT LT 502, (2006) 1 CIVILCOURTC 416, (2006) 1 RENTLR 97, (2005) 8 SCJ 695, (2006) 1 ANDHLD 1, (2005) 7 SUPREME 754, (2006) 1 RECCIVR 18, (2006) 1 WLC(SC)CVL 196, (2006) 62 ALL LR 308, (2006) 1 ANDH LT 34, (2006) 1 ALL WC 9, (2006) 3 SERVLR 579, (2007) 1 ESC 222, (2006) 1 CTC 449 (MAD), (2006) 2 BOM CR 636

Bench: Ruma Pal, A. R. Lakshmanan, R. V. Raveendran

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           CASE NO.:
Appeal (civil)  6701 of 2005

PETITIONER:
Uday Shankar Triyar

RESPONDENT:
Ram Kalewar Prasad Singh & Anr.

DATE OF JUDGMENT: 10/11/2005

BENCH:
Ruma Pal,Dr. A. R. Lakshmanan & R. V. Raveendran

JUDGMENT:
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J U D G M E N T [Arising out of SLP(c) No. 22578 of 2002 R.V. RAVEENDRAN J., Leave granted. This appeal by the landlord (plaintiff in Eviction Suit No.2 of 1989 on the file of Munsiff, First, Samastipur, Bihar) is against the judgment dated 28.7.2003 passed by Patna High Court in MA No. 300/2002.

2. The appellant-plaintiff filed the said eviction suit against one Anugraha Narayan Singh and the District Congress Committee (I), Samastipur, (referred to as 'A.N. Singh' and 'DCC' respectively) on

the following three grounds : (i) that the suit premises (house) was let out to A. N. Singh for his personal residential occupation and the said A.N. Singh had unauthorisedly sub-let a portion of the suit premises to DCC; (ii) that A.N. Singh had committed default in paying the rent and electricity charges; and (iii) that the suit premises was required for his personal use.

3. The defendants resisted the suit. They denied the allegation that the suit premises was let out personally to A.N.Singh for his residence. They contended that the premises was let out to A.N. Singh in his capacity as President of DCC for being used as the office of DCC, on a monthly rent of Rs.200/- (inclusive of electricity charges), and there was no default in paying the rent. They also denied the claim of the landlord that the suit premises was required for his own use.

4. The trial court decreed the suit by judgment and decree dated 6.6.1998 directing eviction and payment of arrears of rent and electricity charges. It held that A.N. Singh took the premises on rent in his personal capacity and not on behalf of DCC; and that a portion of the suit premises was sub-let to DCC without the consent of the landlord. The trial court also held that A.N. Singh had committed default in paying the rents and electricity charges.

5. Feeling aggrieved, A.N. Singh and DCC filed Eviction Appeal No.4 of 1998 on the file of the Additional District Judge, Samastipur (referred to as the 'appellate court'). In the memorandum of appeal, the second appellant DCC was shown as being represented by its 'former President'. On an application made by the appellants, the Appellate Court granted stay of eviction. During the pendency of the appeal, on 23.8.2000, the first appellant (A.N. Singh) died. His legal heirs did not come on record. However, one Ram Kalewar Prasad Singh, claiming to be the 'Working President' of DCC, filed an application to delete the first appellant and show DCC as the sole appellant and also to substitute the words 'Working President' in place of 'former President' as the person representing DCC. The said application for substitution was opposed by the landlord.

6. On hearing the said application for substitution, the learned Additional District Judge, by order dated 27.4.2002, dismissed the appeal. He found that even though A.N. Singh and DCC were arrayed as appellant Nos. 1 and 2 respectively, the Vakalatnama accompanying the memorandum of appeal was signed only by A.N. Singh and no vakalatnama had been filed on behalf of DCC. He, therefore, rejected the request of Ram Kalewar Prasad Singh for substitution on the following reasoning :-

> "Appellant No. 1 died on 23.8.2000 and his legal heir has not come for substitution and as such appeal has abated as against appellant no. 1; and no appeal was filed on behalf of District Congress Committee (I), Samastipur and present appeal on behalf of appellant no. 2 is nullity in the eye of law and hence liable to be dismissed. Accordingly the entire appeal is dismissed."

The said order of the appellate court was challenged by Ram Kalewar Prasad Singh and DCC, in Misc. Appeal No.300 of 2002. A learned Singh Judge of the Patna High Court allowed the said appeal by order dated 28.7.2003. The High Court reasoned that the appeal against the eviction decree had been filed both by A.N. Singh and DCC which was a separate juristic person (described

accordingly in the plaint by the landlord); that while it was true that a former President could not represent DCC in the appeal and DCC had not granted a vakalatnama, neither the landlord (respondent in the said appeal) nor the Office had raised any such objection; and that as the juristic person (DCC) was already on record, the person entitled to represent such juristic person ought to have been permitted to come on record, and thus rectify the defect relating to improper representation. The High Court, therefore, permitted DCC represented by its 'Working President' to come on record and pursue the appeal before the appellate court. The High Court, however, kept open the question relating to the right of the working President to represent DCC, to be decided in the appeal.

7. The said order of the High Court is challenged contending that the High Court has failed to note that there was no 'appeal' by DCC before the District Court, in the eye of law, for two reasons. Firstly, though DCC was arrayed as the second appellant in the memorandum of appeal, it was shown as represented by its 'former President', and a former President could not represent DCC. Secondly, the Vakalatnama in favour of the pleader was executed only by A.N. Singh and not by DCC. It is submitted that the appeal was, therefore, in effect, only by A.N. Singh, and as his L.Rs. did not come on record on his death, the appeal abated. Reliance is placed on an old decision of the Patna High Court in Sheikh Palat vs. Sarwan Sahu [1920 (55) IC 271] wherein it was held that presentation of a memorandum of appeal by a Vakil without any authority in the shape of a Vakalatnama is not a valid presentation.

8. On the other hand, learned counsel for the respondents submitted that the order of the High Court did not suffer from any error. He pointed out that DCC had been impleaded as the second defendant in the eviction suit; that DCC was represented by its President A.N. Singh in the suit; and that by the time the appeal against the eviction decree was filed, A.N.Singh had ceased to be its President, but as he had represented DCC in the suit, the appeal was filed by A.N. Singh on behalf of himself and on behalf of DCC as its former President. It is submitted that failure to mention in the Vakalatnama that A.N. Singh was executing the Vakalatnama not only as the first appellant, but also on behalf of the second appellant (DCC), was due to oversight. It is submitted that DCC being represented in the appeal by a 'former President' was also a curable defect. It is contended that if either the landlord or the office had pointed out the said defect/omission, it would have been rectified immediately; and, therefore, the application filed by the working President for substitution was rightly allowed by the High Court.

9. Two questions, therefore, arise for our consideration : (i) whether the appeal by DCC against the eviction decree was defective or invalid and (ii) whether such defect could be permitted to be rectified ?

10. Order 41 Rule 1 CPC requires every appeal to be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the court or to such officer as it appoints in that behalf. Order 3 Rule 4 CPC deals with appointment of pleaders. Relevant portion thereof is extracted below :

"4. Appointment of pleader. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all the proceedings in the suit are ended so far as regards the client.

[Explanation. For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit, --

(a) x x x

(b) x x x

(c) an appeal from any decree or order in the suit, ..."

11. In Bihar State Electricity Board Vs. Bhowra Kankanee Collieries Ltd. [1984 (Supp.) SCC 597], this Court considered a case where the Vakalatnama was not filed with the Appeal Memo. As the defect was not removed in spite of grant of an opportunity, the High Court dismissed the appeal as also the application for restoration. This Court, while allowing the appeal against the said dismissal, held thus :-

"6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction more so such a simple one as filing Vakalatnama. The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna ?

7. It is not for a moment suggested that a party can ignore peremptory orders of the Court for making the appeal ready for hearing the appeal within a specified time. But having said this, it must also be borne in mind that the procedure was devised for doing justice and not for thwarting the same. In such a situation, civil courts have leaned in favour of repairing the harassment, inconvenience or damage to the other side by some order of costs. But to take the view that failure to comply with an order for filing Vakalatnama would result in dismissal of the appeal involving a fairly good sum is to put such procedural requirement on a pedestal tall enough to hinder the course of justice. We find it difficult to be a party to this proposition. Hence we are inclined to interfere."

12. In Shastri Yagnapurushdasji & Ors. V. Muldas Bhundardas Vaishya & Anr. [AIR 1966 SC 1119], this Court considered a case where the Vakalatnama was in favour of 'X', but the memorandum of appeal was signed and filed by 'Y'. This Court while holding that the High Court was justified in permitting 'X' to sign the memorandum of appeal, in order to remove the irregularity, observed thus :

> "Technically, it may be conceded that the memorandum of appeal presented by Mr. Daundkar suffered from the infirmity that respondent No.1 had signed his Vakalatnama in favour of the Government Pleader and Mr. Daundkar could not have accepted it, though he was working in the Government Pleader's office as an Assistant Government Pleader. Even so, the said memo was accepted by the office of the Registrar of the Appellate Side of the High Court, because the Registry regarded the presentation of the appeal to be proper; the appeal was in due course admitted and if finally came up for hearing before the High Court. The failure of the Registry to invite the attention of the Assistant Government Pleader to the irregularity committed in the presentation of the said appeal cannot be said to be irrelevant in dealing with the validity of the contention raised by the appellants. If the Registry had returned the appeal to Mr. Daundkar as irregularly presented, the irregularity could have been immediately corrected and the Government Pleader would have signed both the memo of appeal and the Vakalatnama. It is an elementary rule of justice that no party should suffer for the mistake of the court or its office."

13. We may also usefully refer to the decision in Kodi Lal Vs. Ch. Ahmad Hasan]AIR 1945 Oudh 200], where the legal position was stated thus : -

> "The governing rule no doubt is that the counsel must be duly authorized by his client to enable him to sign the appeal or to present it on his behalf. ..... It is to be noticed that the procedure, which is laid down imposes a prohibition on the pleader to act without a valid power. It does not confer any benefit on the opponent except perhaps on the hypothesis that the actings of the counsel do not amount to acting in law. Where circumstances disclose however that the omission to file a power at the time of presentation of the appeal was accidental, it would be inequitable to visit the penalty for the omission on the litigant by insisting that his appeal must fail. Sub-rule (1) of R.4 of O.3 does not prohibit a Court from giving under S. 151, Civil P.C., retrospective validity to the act of a pleader who files a vakalatnama subsequently. ..... Ordinarily a power must be filed either antecedently or simultaneously with the acting but unless it is so enjoined or any principle of law is violated or injustice is likely to occur, a statutory rule of practice should not normally be allowed to be used as a weapon of attack. The following dictum of Bowen L.J., in (1884) 26 Ch. D. 700 may be here referred to with advantage :
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> "The object of Courts is to decide the rights of parties and not to punish them for mistakes which they make in the conduct of their cases by deciding otherwise than in accordance with their rights ... Courts do not exist for the sake of discipline, but for

the sake of deciding matters in controversy."

If therefore there was an inadvertent technical violation of the rule in consequence of a bona fide mistake, and the mistake is subsequently remedied the defect need not necessarily be fatal."

14. In so far as the decision in Sheikh Palat (supra) relied on by the appellant-landlord, we find that the said decision is not of much assistance to the appellant as the decision itself clarifies that "it may not be necessary to file a Vakalatnama with the petition of appeal, but it is certainly necessary that there should be at the time of presentation of the appeal, a Vakalatnama in existence bearing the signature of the appellant or his attorney."

15. It is, thus, now well-settled that any defect in signing the memorandum of appeal or any defect in the authority of the person signing the memorandum of appeal, or the omission to file the vakalatnama executed by the appellant, along with the appeal, will not invalidate the memorandum of appeal, if such omission or defect is not deliberate and the signing of the Appeal memorandum or the presentation thereof before the appellate court was with the knowledge and authority of the appellant. Such omission or defect being one relatable to procedure, it can subsequently be corrected. It is the duty of the Office to verify whether the memorandum of appeal was signed by the appellant or his authorized agent or pleader holding appropriate vakalatnama. If the Office does not point out such defect and the appeal is accepted and proceeded with, it cannot be rejected at the hearing of the appeal merely by reason of such defect, without giving an opportunity to the appellant to rectify it. The requirement that the appeal should be signed by the appellant or his pleader (duly authorized by a Vakalatnama executed by the appellant) is, no doubt, mandatory. But it does not mean that non-compliance should result in automatic rejection of the appeal without an opportunity to the appellant to rectify the defect. If and when the defect is noticed or pointed out, the court should, either on an application by the appellant or suo motu, permit the appellant to rectify the defect by either signing the memorandum of appeal or by furnishing the vakalatnama. It should also be kept in view that if the pleader signing the memorandum of appeal has appeared for the party in the trial court, then he need not present a fresh Vakalatnama along with the memorandum of appeal, as the Vakalatnama in his favour filed in the trial court will be sufficient authority to sign and present the memorandum of appeal having regard to Rule 4(2) of Order 3 CPC, read with Explanation [c] thereto. In such an event, a mere memo referring to the authority given to him in the trial court may be sufficient. However, filing a fresh Vakalatnama with the memo of appeal will always be convenient to facilitate the processing of the appeal by the office.

16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognized that if a plaint is not signed by the plaintiff or his duly authorized agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless

the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are :-

i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.

ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

iii) where the non-compliance or violation is proved to be deliberate or mischievous;

iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant;

18. We will now examine the facts of this case with reference to the aforesaid principles. A.N. Singh and DCC (by its President A.N. Singh) were the defendants in the eviction suit and they were represented in the trial court by their counsel Shri Bindeshwar Prasad Singh and his colleagues. The cause-title of the memorandum of appeal against the eviction suit shows that there were two appellants - A.N. Singh and DCC. It is evident from the subsequent application for substitution that DCC was aware of the filing of the appeal. The memorandum of appeal was signed by Shri Umesh Chandra Kumar, Advocate, colleague of Shri Bindeshwar Prasad Singh. It was accompanied by a vakalatnama executed by A.N. Singh in favour of Shri Bindeshwar Prasad Singh and his colleagues including Shri Umesh Chandra Kumar. The office report on examination of the memorandum of appeal did not refer to any defect relating to absence of any vakalatnama by DCC. It is apparent that the appellants' counsel and the District Court office proceeded on the basis that A.N. Singh was representing himself and the DCC as its former President. Only when A.N. Singh died and the working President of DCC filed an application for deletion of appellant No.1 (A.N. Singh) and for amendment of the description of appellant No.2 by substitution of the words 'Working President' for 'Former President" as the person representing DCC, an objection was raised alleging improper presentation. In the circumstances, the appellate court ought to have accepted the application for amendment and substitution filed on behalf of DCC.

19. Another aspect requires to be noticed. When A.N. Singh ceased to be the President, it is true that in the normal course, he could not have represented DCC as its former President. But it was possible for A.N. Singh to represent DCC as its former President, if there was a resolution by DCC expressly authorizing him to represent it in the appeal. It is also possible that in the absence of a new President, A.N. Singh continued to act on the assumption that he was entitled to represent DCC. As no objection was raised during the lifetime of A.N. Singh, his explanation is not available as to why he chose to represent DCC in the appeal, as its 'former President'. Neither the office of the appellate

court, nor the landlord-respondent having raised this issue and the Vakalatnama signed by A.N. Singh having been received and impliedly accepted by the appellate court as validly executed by the appellants, the landlord's objection to the application for substitution ought to have been rejected by the appellate court. At all events, if the representation was found to be defective or non-existent, the appellate court ought to have granted an opportunity to the second appellant DCC, to rectify the defect.

20. There is yet another reason to hold that the appeal by DCC against the eviction decree was validly filed. DCC was represented by Shri Bindeshwar Prasad Singh and his colleagues in the trial court. The same counsel filed the appeal. The Vakalatnama granted by DCC in favour of the said counsel in the trial court was sufficient authorization to the said counsel to file the appeal having regard to Order 3 Rule 4(2) CPC read with Explanation [c], even without a separate vakalatnama for the appeal.

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 office-bearer, 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.

22. Coming back, we find that the High Court was justified in setting aside the dismissal and restoring the first appeal to the file of the Additional District Judge with a direction to decide the matter on merits. We, therefore, dismiss this appeal.

Nothing stated above or by the High Court, shall be construed as an expression of any view or opinion on the merits.