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CRP. PD. No.2617 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.06.2025

Pronounced on:27.06.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. PD. No.2617 of 2024

and CMP. No.13757 of 2024

Prasanna Subbiah
Rep. By his Power Agent,
Kalyani

Petitioner(s)

Vs

Divya Muthiah

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to quash the order of return dated 21.06.2024 made in I.A.SR. No.6201 of 2024 in O.P. No.3494 of 2023 on the file of the learned VII Additional Family Court, Chennai and permit the Petitioner to be represented by her duly authorized Power of Attorney Agent.

For Petitioner : Mr.A.V.Arun
for Ms.M.Abinu Monisha

For Respondent : Mr.Suchit Anant Palande

ORDER

This Revision has been preferred to set aside the order of return dated 21.06.2024 in I.A.SR.No.6201 of 2024 in O.P. No.3494 of 2023 on the file of the VII Additional Family Court, Chennai and to consequently, permit the



petitioner to be represented by his duly authorized Power of Attorney Agent.

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2. I have heard Mr.A.V.Arun for Ms.M.Abinu Monisha, learned counsel for the petitioner and Mr.Suchit Anant Palande, learned counsel for the respondent.

3. The main O.P. No.3494 of 2023 has been filed by the respondent/wife seeking dissolution of marriage with the petitioner. The petitioner filed an Application under Order III Rule 2 of the Code of Civil Procedure, 1908, seeking permission to be represented by his Power Agent. The said Application was returned by the VII Additional Family Court, Chennai with the return as to how the petition is maintainable. Challenging the said return of the Application, the present revision has been filed.

4. The learned counsel for the petitioner, Mr.A.V.Arun would contend that the refusal to entertain the petition is highly arbitrary and unsustainable. He would further state that the Court ought not to have refused to even number the Application, without even assigning any reasons. Mr.A.V.Arun, would further state that even before the Family Courts, it is now settled law that the parties can be represented by duly constituted Power Agents and their physical presence should be insisted upon only for specific hearings



where it is absolutely necessary and not for all other hearings. The learned counsel would further state that even the respondent/wife is presently residing only in Australia and therefore, the Application to permit the petitioner to be represented by a Power Agent ought not to have been rejected even at the threshold.

5. The learned counsel would also place reliance on the decision of the Hon'ble Supreme Court in *Malaysian Airlines Systems BHD vs STIC Travels (P) Ltd* reported in *(2001) 1 SCC 451*, where the Hon'ble Supreme Court has held that, where an unstamped document is produced as evidence, within three months of execution, the stamp duty can be collected without impounding and without penalty and if the document is sought to be used as evidence beyond three months, then the bar of three months shall not apply and the document can be impounded under Section 33 and Stamp duty and penalty be levied, even after expiry of three months.

6. Mr.A.V.Arun, learned counsel would point out that the Power of Attorney has been filed before the Family Court along with the Application and it was well within the period of three months and therefore, the Family Court ought to have impounded the document, if it had found that the document was not properly stamped.



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7. Per contra, Mr.Suchit Anant Palande, learned counsel for the respondent would state that the petitioner has not filed any affidavit along with the petition under Order III Rule 1 CPC, seeking permission to permit the Power Agent to appear on his behalf and referring to the power of attorney itself, the learned counsel for the respondent would state that the power of attorney has been executed on plain bond sheets and no adjudication has also been done before the competent Sub-Registrar here and therefore, he would state that the power of attorney is not valid in the eye of law.

8. He would further rely on the decisions of this Court in ***Nanda Kishore Kolluru vs Madhulika Maddipudi in CRP (PD).Nos.4073 & 4227 of 2024 , dated 31.01.2025***, where this Court has held that wherever Power of Attorney is executed abroad and sent to India, it should be adjudicated by the Competent Authority, or it should be notarized by the Notary Public or a similar Officer appointed by that country to attest the document and in the event of the same being notarised, the power of attorney should be accompanied by a Certificate of notary public confirming that the party is residing within the jurisdiction for which he has been authorised. This Court has further held that under Section 3(c) of the Stamp Act r/w Article 48 of Schedule 1, the Power of Attorney should also be adjudicated. He would therefore state that there was no error committed by the Family Court in returning the Application as not maintainable.



9. I have carefully considered the submissions advanced by the learned counsel on either side.

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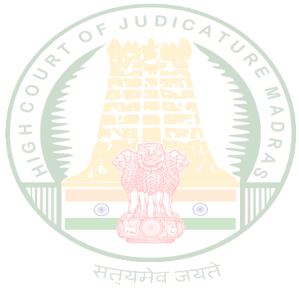
10. Admittedly, both the parties reside abroad. The petitioner who is the respondent in the OP has appointed a Power of Attorney agent. The Power of Attorney, as contended by the learned counsel for the respondent, is executed before the Consular High Commission of India at the United Kingdom. The Power of Attorney is not on requisite non judicial stamp paper also. The said power of attorney is attested by two independent witnesses apart from being executed before the Consular High Commission of India. The Power of Attorney no doubt empowers the Power Agent, who is none else than the mother of the revision petitioner, to act as the petitioners' agent and represent the petitioner in O.P. No.3494 of 2023. The issue is now with regard to the validity of the power of attorney, the said power of attorney has been executed before the Consular High Commission of India in the UK on 21.05.2024. The petitioner, represented by the Power Agent, has taken out an Interlocutory Application and the same was filed on 30.05.2024 before the VII Additional Family Court, Chennai and a petition has been filed on 06.06.2024. The said petition has been returned on 21.06.2024, with the reading, *“How this petition maintainable. Hence returned. Time”*.



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11. As rightly contended by Mr.A.V.Arun, learned counsel for the petitioner, the Family Court ought to have given reasons for finding the petition to be not maintainable, warranting return of the same. The petitioner who has filed this Application has been taken by surprise and is not in a position to even ascertain as to why this petition is held to be not maintainable. If the fact that the petition was returned on the ground of Power of Attorney not being adjudicated or not being duly stamped, then the Court ought to have specifically put the petitioner on notice about the same. Therefore, the petitioner cannot be found fault with for not adjudicating the Power of Attorney, within the statutory period of three months. In any event, these procedural matters are certainly curable and such technicalities should not come in the way of doing substantial justice to the parties.

12. Even in the decision in which reliance has been placed on by the learned counsel for the respondent, this Court has given several directions with regard to appearance of a party before the Family Court through Power of Attorney agent. This Court has held that the permission petition is to be presented by a Power Agent, must be accompanied by a petition under Order III Rule 1 CPC, registered and adjudicated Power of Attorney and two affidavits, one executed by the Principal stating that he/she is appointed as Power of Attorney and the other executed by the Power of Attorney Agent, accepting the power that has been given by the petitioner.



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13. As rightly pointed out by the learned counsel for the respondent, the principal has not filed an affidavit as required and held by this Court in ***Nanda Kishore Kolluru's*** case (referred herein supra). Again these are defects which are certainly curable. Insofar as the adjudication of the Power of Attorney, having found that the petitioner is not at fault, as per the ratio laid down by the Hon'ble Supreme Court in ***Malaysian Airlines's*** case, (referred herein supra) stamp duty payable, can always be collected even at a later point of time when the document is tendered in evidence. Admittedly, the Power of Attorney is specific to authorising the petitioner's mother to represent the petitioner in the Family Court and there is absolutely no right, interest or title in respect of any property that is subject matter of the said Power of Attorney. Therefore, subject to the petitioner adjudicating the Power of Attorney and paying the necessary Stamp duty, the said Power of Attorney can certainly be relied on before the Family Court.

14. In view of the above, the order of return dated 21.06.2024 made in I.A.SR. No.6201 of 2024 in O.P. No.3494 of 2023 on the file of the learned VII Additional Family Court, Chennai is hereby set aside and accordingly, this Civil Revision Petition is allowed with a direction to the petitioner, to have the Power of Attorney adjudicated before the competent Sub - Registrar, within a period of four weeks from the date of receipt of the



copy of this order. The Sub- Registrar authority shall not put delay against the petitioner in seeking adjudication, considering that the Power of

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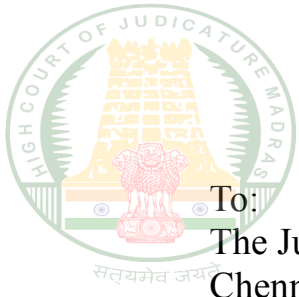
Attorney was filed before the Family Court well within the period of three months within which should have been adjudicated. No penalty shall also be levied. On such adjudication of the Power of Attorney, the petitioner shall represent the petition, along with the affidavit of the Principal, that is the petitioner, as directed by this Court in *Nanda Kishore Kolluru's* case (referred herein supra). On such duly adjudicated Power of Attorney and affidavit of the petitioner being filed, the Family Court shall permit the petitioner to be represented by his mother as Power Agent. The Registry shall forthwith return the original Power of Attorney and the permission petition, if filed before this court, across getting an acknowledgment from the counsel for the petitioner. Consequently, connected Miscellaneous Petition is closed. No costs.

27.06.2025

rkp

Index : Yes / No

Internet : Yes / No



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To:
The Judge, VII Additional Family Court,
Chennai.

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P.B.BALAJI, J.,

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Pre-delivery order in
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