

REVISIONAL CIVIL.

Before Mr. Justice Addison.

BUDHU RAM (PLAINTIFF) Petitioner,

versus

KALU RAM (DEFENDANT) Respondent.

1925

May 12.

Civil Revision No. 90 of 1925.

Civil Procedure Code, Act V of 1908, Order III, rule 4—Vakalatnamah—whether written acceptance thereof by a Pleader is necessary—Fresh Vakalatnamah unnecessary in Appellate Court if the original gives powers to file appeal.

Held, that under the provisions of Order III, rule 4 of the Code of Civil Procedure, the acceptance of a Vakalatnamah by a Pleader need not be in writing upon the Vakalatnamah.

Mathra Das-Bishambar Nath v. Rama Lal-Kanshi Nath (1), and Mahesh Chundra Addy v. Panchu Mudali (2), referred to.

Muhammad Ali Khan v. Jas Ram (3), distinguished.

Held also, that if the original power of attorney authorises a Pleader to file an appeal, a fresh power is not required in the Appellate Court.

Dyal v. Hirde Ram (4), referred to.

Application for revision of the decree of Mian Ahsan-ul-Haq, District Judge, Dera Ghazi Khan, dated the 29th July 1924, affirming that of Sheikh Abdul Ali, Subordinate Judge, 4th class, Dera Ghazi Khan, dated the 7th June 1924, dismissing the claim.

AMAR NATH, CHONA, for Petitioner.

SAGAR CHAND, for Respondent.

JUDGMENT.

ADDISON J.—The plaintiff sued the defendant for recovery of Rs. 119-10-0 on a promissory note. His suit was dismissed and he appealed in the Court of

(1) (1923) All. I. R. Lah. 402.

(3) (1913) I. L. R. 36 All. 46.

(2) (1915) I. L. R. 43 Cal. 884, 888.

(4) 80 P. W. R. 1915.

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the District Judge. His appeal has been dismissed on the ground that the *vakalatnamah* or appointment of the Pleader, who filed the appeal, was not accepted in writing by him. Against this decision this revision petition has been filed.

It obviously must be accepted. It is not stated in Order III, rule 4 (2), Civil Procedure Code, that the *vakalatnamah* should be accepted by a Pleader in writing. It was conceded by the learned counsel who appeared in the case of *Mathra Das-Bishambar Nath v. Rama Lal-Kanshi Nath* (1) that the acceptance of a power of attorney need not be in writing. It was held in *Mahesh Chandru Addy v. Panchu Mudali* (2), that Order III, rule 4, Civil Procedure Code, does not expressly state that the acceptance of a *vakalatnamah* should be in writing, and it was pointed out that in a previous case of that Court this had also been held. In the Calcutta High Court there is now a rule of that Court that the acceptance must be in writing, but there is no rule of this High Court that this should be so. The ruling relied upon by the District Judge, namely *Muhammad Ali Khan v. Jas Ram* (3) is not in point. There the name of the Pleader was omitted from the body of the *vakalatnamah*. I, therefore, hold that the acceptance of a *vakalatnamah* need not be in writing by the Pleader upon the *vakalatnamah*, and the fact that he appeared and conducted the case in the lower Court and also filed the appeal shows that he accepted it.

It was argued, however, by the respondent's counsel that the revision should be dismissed as a fresh power of attorney was not filed with the appeal.

(1) (1923) All I. R. Lah. 402. (2) (1915) I. L. R. 43 Cal. 884, 888.

(3) (1913) I. L. R. 36 All. 46.

There is no force in this as by the original power of attorney the Pleader was given authority to file an appeal and to conduct it. It has been held by this Court in *Dyal v. Hirde Ram* (1) that a power of attorney authorising a Pleader to prosecute all the litigation of a suit impliedly confers upon him the power to lodge and conduct the appeal up to the Chief Court.

In the result this revision petition is accepted with costs and the order of the District Judge is set aside, and the appeal is returned to him for decision on the merits.

A. N. C.

Revision accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Harrison.

ISMAIL—Petitioner

versus

THE CROWN—Respondent.

1925

May 15.

Criminal Revision No. 496 of 1925.

Indian Penal Code, 1860, sections 103 (4), 442—“ Building ”—Unroofed wara—Private defence—Burglar killed in the dark by blows on the head.

The accused, on being awakened in the middle of the night discovered the deceased in his *wara*, the latter having effected his entrance by scaling the wall, which surrounded it on all four sides. The *wara*, of which the small gate was locked, adjoined the room in which the accused had been sleeping, and was for practical purposes one of the rooms of the house, and an integral part of the building. In the scuffle the accused killed the deceased by striking him on the head with a stick.

Held, that though the *wara* was unroofed it was a “ building ” within the meaning of section 442 of the Indian Penal Code.