

A GOA ANTIBIOTICS & PHARMACEUTICALS LTD.

v.

R.K. CHAWLA & ANOTHER

(Criminal Miscellaneous Petition No. 10490 of 2011)

JULY 04, 2011

B

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Advocates Act, 1961:

C ss. 29, 33 – *Right to practice in courts – Held: A person enrolled as an Advocate only can practice in courts – Natural person can appear in person and argue his own case personally but he cannot give a power of attorney to anyone other than a person enrolled as an advocate to appear on his behalf –s.32, however, vests discretion in the court to permit*
D *any person who is not enrolled as an advocate to appear before the court and argue a particular case – In the instant case, an application for permission was filed by the Deputy Manager, power of attorney holder to argue the case personally on behalf of the petitioner-company – Supreme*
E *Court refused to exercise discretion under s.32 and rejected the said application – Petitioner-company granted four weeks time to engage a lawyer to appear and argue on its behalf.*

F *s. 32 – Right to appear/argue on behalf of entity – Held: As regards the artificial persons like a company registered under the Companies Act or a registered co-operative society or a trust, neither the Director of the company nor member of the Managing Committee or officer bearer of the registered society or a trustee has a right to appear and argue on behalf*
G *of that entity, since that entity is distinct from its shareholders or office bearers or Directors – However, court has discretion u/s. 32 to permit such person to appear on behalf of that entity.*

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ss. 29 and 33 – Right of an enrolled lawyer to appear on behalf of someone and discretion vested in the court to permit a non-lawyer to appear before it – Distinction between.

Power of attorney: Right of power of attorney holder to appear or argue – Held: Power of attorney holder cannot, unless he is an enrolled lawyer, appear in court on behalf of anyone, unless permitted by the court u/s. 32 of Advocates Act, though of course he may sign sale deeds, agreements etc. and do other acts on behalf of someone else, unless prohibited by law – Advocates Act, 1961 – ss.29, 32, 33.

CRIMINAL APPELLATE JURISDICTION : CrI. M.P. No. 10490 of 2011.

From the Judgment & Order dated 21.4.2009 of the High Court of Bombay & Goa at Panaji in Criminal Revision Application No. 60 of 2008.

WITH

CrI. M.P. No. 10490 of 2011.

Petitioner-In-Person.

The following Order of the Court was delivered

O R D E R

Mr. Vishnu Kerikar, Deputy Manager, Finance & MS claims to be the power of attorney holder of the petitioner-Goa Antibiotics & Pharmaceuticals Limited in this case. He wishes to argue the case personally on behalf of the petitioner.

Section 33 of the Advocates Act, 1961 (hereinafter referred to as the 'Act') states as follows:

"33. Advocates alone entitled to practise - Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the

A appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.”

B A perusal of the above provision shows that only a person who is enrolled as an advocate can practice in a court, except where otherwise provided by law. This is also evident from Section 29 of the Act.

C A natural person can, of course, appear in person and □ argue his own case personally but he cannot give a power of attorney to anyone other than a person who is enrolled as an advocate to appear on his behalf. To hold otherwise would be to defeat the provisions of the Advocates Act.

D Section 32 of the Act, however, vests discretion in the court, authority or person to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case. Section 32 of the Act is not the right of a person (other than an enrolled advocate) to appear and argue before the court but it is the discretion conferred by the Act on the court to permit any one to appear in a particular case even though he is not enrolled as an advocate.

F In this case, an application for permission has been filed by Mr. Vishnu Kerikar who wishes to appear and argue on behalf of the petitioner-Goa Antibiotics & Pharmaceuticals Ltd. which is a company registered under the Indian Companies Act. We are not inclined to exercise our discretion under Section 32 of the Act and hence we reject the said application.

G However, we grant the petitioner four weeks' time to engage a lawyer to appear and argue on behalf of the petitioner-company.

H We make it clear that as regards artificial persons like a company registered under the Indian Companies Act, or a □ registered co-operative society, or a trust, neither the Director of the Company nor member of the Managing Committee or

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office bearer of the registered society or a trustee has a right to appear and argue on behalf of that entity, since that entity is distinct from its shareholders or office bearers or directors. However, it is the discretion of the court under Section 32 of the Act to permit such person to appear on behalf of that entity.

There is a distinction between the right to appear on behalf of someone, which is only given to enrolled lawyers, and the discretion in the Court to permit a non-lawyer to appear before it. Under Sections 29 and 33 of the Act only those persons have a right to appear and argue before the court who are enrolled as an advocate while under Section 32 of the Act, a power is vested in the court to permit, in a particular case, a person other than an advocate to appear before it and argue the case. A power of attorney holder cannot, unless he is an enrolled lawyer, appear in Court on behalf of anyone, unless permitted by the Court under Section 32 of the Act, though of course he may sign sale deeds, agreements etc. and do other acts on behalf of someone else, unless prohibited by law.

Accordingly, the matter is adjourned by four weeks to enable the petitioner to engage a lawyer to appear and argue on its behalf.

D.G.

Matter adjourned.