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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1482 OF 2015

Inayatkhani Gulabkhan Pathan ..PETITIONER

VERSUS

Akhtarbee Abdul Latif Pathan
and ors. ..RESPONDENTS

Mr Ashwin V. Hon, Advocate for petitioner

**CORAM : N.W. SAMBRE, J.
DATE : 2nd December, 2015**

ORAL ORDER :

In a suit for partition and separate possession, bearing Regular Civil Suit No.55 of 2006, defendant no.1 moved two applications; Exh.164 seeking discarding the evidence of the power of attorney holder, who was representing plaintiffs no.1, 3 and 4, who are pardanashin women and application Exh.172, whereby plaintiff no.3 was sought to be called for cross-examination, pursuant to the examination-in-chief filed by her.

2. Both the applications, i.e. Exhs.164 and 172 came to be rejected by Joint Civil Judge Junior Division, Shevgaon, by order dated 6th January, 2015. Thus, the present petition.

3. So far as the issue as regards right to depose in favour of a power of attorney on behalf of the plaintiffs is concerned, the provisions of Order III, Rules 1 and 2 of the Code of Civil Procedure, are quite clear. The Apex

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Court, in the matter of **S. Kesari Hanuman Goud vs. Anjum Jehan & ors.**, reported in **2013 (3) ALL MR 916 (S.C.)**, has observed that the power of attorney holder can depose on behalf of a party, to the extent of acts carried out by him for and on behalf of such party and not in relation to the matter, which is within the personal knowledge of the concerned party. In view thereof, in my opinion, the order passed on application Exh.164, which is impugned in the present petition, does not call for any interference, as at the time of analyzing the evidence of power of attorney holder, for and on behalf of the plaintiffs, it is expected of the learned Trial Court to consider only such part of evidence, which he has deposed pursuant to the acts carried out by him and not such acts, which are within the personal knowledge of the party. While doing so, learned Trial Court shall take into account the law laid down in the matter of S. Kesari Hanuman Goud (supra).

4. So far as the second contention as regards summoning plaintiff no.3 for cross-examination, as sought by virtue of application Exh.172 is concerned, it is required to be noted here that, if plaintiff no.3 has filed her examination-in-chief and is not appearing for cross-examination, the consequence thereof will follow and the learned Trial Court will be required to ignore examination-in-chief of plaintiff no.3 or may draw appropriate presumption/adverse inference.

5. In view thereof, in my opinion, no case for interference, in the extraordinary jurisdiction of this Court, is made out. Petition thus fails and

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stands dismissed, with no order as to costs. However, the Trial Court shall take into account the observations made by the Apex Court, in the matter of S. Kesari Hanuman Goud (supra).

(N.W. SAMBRE, J.)

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