

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

WRIT PETITION NO. 3221 OF 2014

Sudhir s/o Sarangdhar Kulkarni,
Age: 51 years, Occ: Business,
R/o. Tambri Vibhag, Osmanabad,
Tq. & Dist. Osmanabad.

...Petitioner

versus

Shri. Chitramandir, Gore Complex,
Through Sow. Sucheta Jeevanrao Gore,
Age: 55 years, Occ: Household &
Business, R/o. Teachers Colony,
Osmanabad, Dist. Osmanabad.

...Respondent

.....
Mr. M.P. Kolpe, Advocate for petitioner
Mr. N.S. Kadam, Advocate h/f Mr. D.M. Mane, Advocate for
respondent

.....

CORAM : N.W. SAMBRE, J.

DATE : 8th DECEMBER, 2015

ORAL ORDER :

In a civil suit for recovery of the rent amount bearing Regular Civil Suit No. 427 of 2012, an application Exhibit-26 came to be moved by the petitioner-defendant praying for striking out the evidence given by the plaintiff through his General Power of Attorney. The application is rejected by learned trial Court by an order dated 09/01/2014, as such, present writ petition.

2. Learned Counsel for the petitioner, while trying to make out a case for showing indulgence, would urge that in view of Order 3 Rule 1 of Code of Civil Procedure, evidence of general power of attorney holder is required to be struck out to the extent of deposed

by him as regards personal knowledge of the facts to the plaintiff and not to general power of attorney. According to him, law laid down by the Apex Court in the matter of ***Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd., and others*** reported in ***AIR 2005 SC 439*** settled clear issue.

3. Mr. Kadam, learned Counsel for the respondent opposed the application on the ground that the said issue can be gone into at the stage of final hearing.

4. Having considered the rival contentions of the parties, it is required to be noted that it is for the Court to analyze the evidence of the parties to the suit, which is brought on record at the time of delivering judgment. At that time, the Court can ignore the evidence given by general power of attorney to the extent of deposed by him about the facts which were within personal knowledge of principal.

5. In view thereof, in my opinion, rejection as is ordered by the trial Court appears to be just and proper, however, the petitioner is at liberty to canvass the same at the time of final hearing of the suit.

6. The writ petition is disposed of in above terms.

[N.W. SAMBRE, J.]