

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 915 OF 2015
WITH
WRIT PETITION NO. 921 OF 2015**

Ahmed Rafique Mustafa & Anr. .. Petitioners
V/s.
Jamila Dawood Patel .. Respondent

Mr. C.G. Gavanekar i/by Mr. G.S. Hiranandani
for the petitioners.
Mr. M.L. Palan for the respondent.

**CORAM : K. R. SHRIRAM, J.
DATE : 10th March, 2015.**

P.C.

1. The writ petition is filed challenging the judgment dated 24th December, 2014 of the Trial Court rejecting an application made by the defendants (the petitioners herein), to discard the evidence by way of examination-in-chief filed by the constituted attorney of the plaintiff. The reason for such an application was that according to petitioners/defendants, a Power of Attorney holder only can act on behalf of plaintiff but cannot give evidence or depose in his place. The defendants stand also is that if the power of attorney holder has rendered some acts on behalf of the principal his depositons, is confined in respect of such acts by virtue of the instrument and cannot include power to act including giving

of evidence or deposing in place or instead of the principal.

2. This application came to be rejected.

3. The counsel for the petitioners relied upon a judgment of the Apex Court in the matter of **Janki Vashdeo Bhojwani V/s. Indusind Bank Ltd. (AIR-2005-SC(439))**. It is correct that in the said judgment, the Apex Court has held that:

"Order. 3 Rr. 1 and 2 empowers the holder of Power of attorney to 'act' on behalf of the principal. The word 'acts' employed in O.3 Rr. 1 and 2, confines only in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. If the power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

4. This however, does not mean that a Constituted Attorney cannot give evidence at all. If constituted attorney gives evidence and principal does not give evidence, it is for the

court to decide the evidenciary value of the evidence of the constituted attorney. Therefore, there is nothing wrong in the conclusion arrived at by the Trial Court in rejecting the application. In fact the Trial Court has also made it very clear that after the constituted attorney's evidence is recorded in his capacity as a constituted attorney, the plaintiff herself will not be allowed to examine herself after the evidence of the constituted attorney is over.

5. In the circumstances, the petitions stands rejected.

(K. R. SHRIRAM, J.)