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

WRIT PETITION NO. 9916 OF 2015

Mr. Ganiso Ramajan Mulani
R/o. Nagthane, Tal. Palus, Dist. Sangli. ... Petitioner.

V/s.

Mr. Usman Aba Jamadar and Ors. ... Respondents.

Mr. Ashutosh Kulkarni a/w. Akshay Kulkarni for the Petitioner.
Mr. Tejpal Ingale for the Respondents.

CORAM : N.M. Jamdar, J.

18 August, 2016.

Oral Order :-

The learned Counsel for the Petitioner seeks to delete Respondents 2 to 4, 6 and 7, Respondent No.5 already stands deleted. He states that the impugned order is passed on the objections raised by the Respondent No.1 alone and therefore, presence of all the Respondents is not necessary. In view of this statement, leave is granted to delete the aforesaid Respondents.

2. Rule. Rule made returnable forthwith. By consent, taken up for final disposal.

3. By the impugned order the learned Civil Judge, Junior Division, Palus, allowed the application filed by the Respondent No.1 to discard the evidence of one Laila Ganiso Mulani examined in the capacity of power of attorney of the Petitioner – Plaintiff. Respondent No.1 had objected to the evidence of this witness being recorded on the ground that the application for examination of this witness as a power of attorney of the Petitioner – Plaintiff was once rejected. The learned Civil Judge upheld this contention and directed that the examination-in-chief filed by this witness as a power of attorney of Plaintiff be discarded.

4. The learned Counsel for the Petitioner submitted that the evidence of Mulani was led as not the power of attorney holder as a witness for the Plaintiff and therefore, there is no question of discarding the evidence of power of attorney holder as the witness is never examined in that capacity. The learned Counsel for Respondent No. 1 pointed out that in the deposition this witness has stated that she has been given authority by the Petitioner, her husband. It is not necessary to go into that controversy as the learned Counsel for the Petitioner has made a statement that the evidence of this witness be treated as an evidence of a witness examined by the Petitioner – Plaintiff and not in lieu of the deposition of the Petitioner on the basis of any authority given to

such witness. If that is the position, as is always available to any litigant, it is open for the Plaintiff to examine Laila Ganiso Mulani as witness in support of his case.

5. In view of this statement made by the learned Counsel for the Petitioner, the basis of the objection raised by Respondent No.1 does not survive and consequently, the impugned order as well.

6. Accordingly, by clarifying that the evidence of witness Mulani be treated as an evidence of a witness examined in support of the case of the Plaintiff, the Writ Petition is allowed in terms of prayer clause (b). The impugned order dated 24 June 2015 below Exhibit 105 in R.C.S. No.14 of 2012 is quashed and set aside. It will be open to the Respondent and other Defendants to cross-examine the said witness. All contentions of the parties on merits are kept open. Rule is made absolute in above terms. No costs.

(N.M. Jamdar, J.)