

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

**WRIT PETITION NO. 5518 OF 2018**

M/s. Shramik Developers .....Petitioner  
V/s.  
Mrs. Kavita Harishchandra Vete & Ors. ....Respondents

Mr. Kashyap Bhalerao for the petitioner.  
Mr. R.L. Majgaonkar i/b. Anil L. Desai for respondent nos.1 to 3.

**CORAM : MRS. MRIDULA BHATKAR, J.  
DATED : 13TH JUNE, 2018.**

**P.C.:**

. Rule. Rule made returnable forthwith. Writ Petition is heard finally at the stage of admission.

2. This Writ Petition is directed against the order dated 04<sup>th</sup> October, 2017 passed by the 3<sup>rd</sup> Joint Civil Judge, Senior Division, Kalyan below Exhibit – 88 in Regular Civil Suit No.208 of 2003.

3. The petitioner/plaintiff has filed the application under Order XI Rule 14 of the Code of Civil Procedure calling upon the defendants to produce the power of attorney dated 21<sup>st</sup> September, 2001 which was executed by the defendant no.1 and her family members in favour of

defendant no.2. It is submitted that though the existence of such power of attorney is admitted, the said power of attorney is not in their custody. It is contended by the defendants that the said power of attorney was taken away by the plaintiff/petitioner being a developer that it was required for the purpose of development and therefore, it was mentioned in the say that the documents are in the custody of the defendants. The learned Judge, Kalyan relying on these contentions, have passed in fact the correct order that at such he was unable to hold that the original documents are in the custody of the defendants. However, during the course of the arguments before this Court, the learned counsel for the respondent nos.1 to 3 made submissions that the power of attorney which was executed by respondent no.1 who is a wife of respondent no.2 i.e. the original defendant nos.1 and 2 is with the defendants and defendants can produce the original documents before the trial court.

4. Considering the contents in the application filed by the defendants before the Trial Court and as the contrary submissions are made by the learned Counsel for the defendants before this Court, I have again made a specific query to the learned counsel for the petitioner and he confirms that the original documents and the power

of attorney issued by respondent no.1/wife in favour of respondent no.2/husband are in the custody of respondent no.2.

5. In view of the above, the order dated 04<sup>th</sup> October, 2017 passed by the 3<sup>rd</sup> Joint Civil Judge, Senior Division, Kalyan below Exhibit – 88 in Regular Civil Suit No.208 of 2003 is hereby set aside. Writ Petition is allowed. Rule made absolute. The learned Civil Judge, Kalyan to take note of this order and the respondents/defendants are hereby directed to produce the original power of attorney which was executed by defendant nos.1 and 3 in favour of defendant no.2.

**(MRS. MRIDULA BHATKAR, J.)**