

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

55 WRIT PETITION NO.3698 OF 2019

HEMLATA VISHWAMBHAR GUNALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Shri Ameya N. Sabnis
AGP for Respondent - State : Shri K.S.Patil

...
CORAM : P.R.BORA, J.

DATE: 18th March, 2019

PER COURT:-

1 Heard Shri A.N.Sabnis, learned Counsel appearing for the petitioner.

2 The present petitioner is original plaintiff in Regular Civil Suit No.241 of 2010, pending on the file of 3rd Joint Civil Judge, Senior Division, Latur. The said suit is filed for perpetual injunction. The learned Counsel submits that the evidence from the side of the plaintiff is completed and the evidence from the side of defendants was to commence. The learned Counsel further submitted that on behalf of the defendants, the evidence affidavit came to be filed of one Shri Lingraj Chandrashekhar Patil, son of defendant No.3 in capacity of the power of attorney holder of the said defendant. The learned Counsel submitted that the said affidavit was objected to by the petitioner - plaintiff

by filing the an application and it was requested that the said evidence affidavit of Shri Lingraj Chandrashekhar Patil be rejected. The learned Counsel submitted that the said application has been wrongly rejected by the Court below and hence, the petitioner has approached this Court.

3 Relying on the Judgment of the Hon'ble Apex Court in the case of *Man Kaur (Dead) By Lrs. Vs. Hartar Singh Sangha [(2010) 10 SCC 512]*, the learned Counsel sought to contend that it was not permissible in the case in hand to allow the power of attorney holder of defendant No.3 to file his evidence affidavit. The learned Counsel submitted that the Trial Court has grossly erred in rejecting the objection raised by the petitioner – plaintiff.

4 I have carefully gone through the impugned order passed by the Trial Court. It does not appear to me that the Trial Court has committed any error in rejecting the application filed by the petitioner. It appears that it is the anxiety of the petitioner that if she does not take any objection for filing of the evidence affidavit of power of attorney holder, perhaps her further objection may not be considered by the Court as about the evidence, which may come on record. Apprehension in the mind of the petitioner is misplaced. The Hon'ble Apex Court in the case of *Man Kaur*

(Dead) By Lrs. (supra) has laid down guidelines; in what circumstances evidence of the power of attorney holder be considered and under which circumstances, such evidence may not be of any use for the party concerned. It no where lays down straight jacket formula that in every case at very initial stage, without going into the merits of the matter, the evidence affidavit be rejected of power of attorney holder. In the circumstances, it does not appear to me that any error has been committed by the Trial Court. It would be open for the petitioner - plaintiff to lead the evidence of her witness in rebuttal. With the observations as above, the petition stands dismissed.

(P.R.BORA)
JUDGE

SPT