

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.757 OF 2019

Purshottam Pandurang Bakre & anr. ... Petitioners

V e r s u s

Nilesh Madhav Manerkar ... Respondent

Mr. Shashikant Narayan Joshi, Advocate for the Petitioners.

Mr. Ashwin D. Bhobe and Ms. Annelise Fernandes, Advocate for the Respondent.

Coram :- C. V. BHADANG, J.
Date : 17th October, 2019.

ORAL ORDER

1. Heard the learned Counsel for the parties.

2. This petition can be disposed off on a short count. The petitioner feeling aggrieved by an order dated 03.07.2019 passed by the learned Trial Court, permitting the respondent-plaintiff to examine himself "through the Power of Attorney holder" Shri Vishwas Kinjawadekar, has filed this petition on the ground that the Power of Attorney Holder cannot depose in the place of the original plaintiff, who was partly examined as Pw.1.

3. Mr. Joshi, the learned Counsel for the petitioners pointed out that the plaintiff had entered into the witness box and his chief examination was partly recorded after which he abandoned the further examination and instead sought to examine the Power of Attorney Holder.

4. Mr. Joshi, the learned Counsel for the petitioners has raised two contentions. First, that the Power of Attorney Holder cannot depose on aspects which are within the personal knowledge of the plaintiff and, secondly, that the plaintiff cannot be said to have examined himself "through the Power of Attorney Holder" as has been permitted by the Trial Court.

5. Mr. Joshi, the learned Counsel has placed reliance on the decision of the Supreme Court in the case of **Janki Vashdeo Bhojwani & anr. vs. Indusind Bank Ltd., & Ors. (2005) 2 SCC 217** and **Man Kaur (Dead) by Lrs. vs. Hartar Singh Sangha (2010) 10 SCC 512**, in order to submit that under Order III Rule 1 and 2 of Civil Procedure Code (CPC) which empowers the Power Of Attorney Holder to act and plead on behalf of the principal is confined only in respect of the acts done by the Power Of Attorney Holder in exercise of the power granted by the instrument.

6. I have considered the submissions made. In the first place, whether a particular witness is examined as Pw.1 or Pw.2, is not decisive.

7. The Supreme Court in the case of **Janki Vashdeo Bhojwani** (supra) has held thus, in para 13 of the judgment :

"13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to 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. In other words, if the power of attorney holder has rendered some "acts" in pursuance of 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 of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

8. It can thus clearly be seen that the Power of Attorney Holder can only depose in respect of the "acts" done in pursuance of the Power of Attorney Holder but he cannot depose for the principal for the acts done by the principal and

not by him. Similarly, the Power of Attorney Holder cannot depose for the principal in respect of matters of which only the principal can have a personal knowledge, it is evident that while permitting and recording the evidence of Pw.2, the learned Trial Court will have to consider the extent to which the Power of Attorney Holder can depose on behalf of the principal as held by the Hon'ble Supreme Court.

9. Subject to this, the petition is disposed off with no order as to costs.

C. V. BHADANG, J.

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