

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10490 OF 2019

MOHAN GANPATI ARJUN AND ORS.)...PETITIONERS

V/s.

KUNDLIK MAHADEV ARJUN & ANR.)...RESPONDENTS

Shri.Y.B.Lengare, Advocate for the Petitioner.

Shri.Milind Prabhune i/b. Shri.Sarang Aradhye, Advocate for
Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 4th NOVEMBER 2019

P.C. :

1 The defendants in this suit are challenging the order
below Exhibit 100 passed by the learned Civil Judge, Junior
Division, Atpadi, in Regular Civil Suit No.82 of 2013.

2 Heard the learned counsel appearing for the
petitioners/defendants. He argued that defendants had applied for

discarding evidence of Power of Attorney holder (hereinafter referred to as “POA holder” for the sake of brevity) of the plaintiff and the learned trial court erred in rejecting the said application by the impugned order. In his submission, the POA holder cannot enter in the witness box in place of the Principal. To buttress this contention, the learned counsel for the defendants placed reliance on Janki Vashdeo Bhojwani and Another vs. Indusind Bank Ltd. and Others¹.

3 I have considered the submissions so advanced. The suit came to be filed by the plaintiff through his father as POA holder. Evidence affidavit of father of the plaintiff was placed before the learned trial court and it was read and recorded. However, at that stage, the defendants i.e. the present petitioners moved an application for discarding that evidence with a contention that the POA holder has no right to enter in the witness box and the plaintiff ought to have entered in the witness box. The said application for discarding evidence of the POA holder of the plaintiff came to be rejected by the learned trial

¹ AIR 2005 SUPREME COURT 439

court by holding that POA holder can lead evidence in the capacity of a witness.

4 It is not pointed out to this court that in the list of witnesses, the plaintiff is cited as a witness and he has not entered in the witness box first. The POA holder though cannot depose in place of the plaintiff, he can certainly adduce evidence as witness of facts which are within his knowledge.

5 In this view of the matter, no infirmity is found in the impugned order. The petition, therefore, fails and the same is dismissed.

(A. M. BADAR, J.)