

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

WRIT PETITION NO. 1227 OF 2020

Subodh Manohar Mahadik	...	Petitioner
Vs.		
Smt. Rekha Niles Kharwadkar	...	Respondent

Mr.Rohit Joshi for Petitioner.
Mr.D.S. Patil for Respondent.

CORAM : A.S. GADKARI, J.
DATE : 9th March 2020.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner/original defendant has impugned Order dated 1st April 2019 in Special Civil Suit No. 162 of 2013 passed below Exhibit-46, by the learned Civil Judge Senior Division, Alibaug, rejecting the application preferred by the petitioner for discarding the affidavit of evidence in lieu of examination-in-chief filed by the Power of Attorney Holder of the original plaintiff.

2] Heard Mr.Joshi, learned counsel for the petitioner and Mr.Patil, learned counsel for the respondent. Perused the entire record.

3] The Power of Attorney Holder of the respondent filed an affidavit in lieu of examination-in-chief in a suit instituted by the respondent. The same

is objected the petitioner/original defendant by filing the present application below Exhibit-46 on the ground that, the Power of Attorney Holder of the respondent has no concerned with the business of the respondent and he cannot depose on her behalf pertaining to the transactions involved in the suit. The Trial Court by its impugned Order dated 1st April 2019 has rejected the said application.

4] Mr.Joshi, learned counsel for the petitioner submitted that, except a bald statement that, the business of the respondent was being looked after by her husband and son, no other details are mentioned in the plaint. He further submitted that, specific averments with respect to the knowledge of the Power of Attorney Holder with respect to the transactions in question is silent in the plaint and therefore, the application filed by the petitioner below Exhibit-46 needs to be allowed by setting aside the impugned Order.

5] Per contra, Mr.Patil, learned counsel for the respondent/original plaintiff vehemently opposed the application and submitted that, with a view to protract the suit instituted by the respondent, the petitioner has filed the said application, which has rightly been rejected by the Trial Court.

6] A useful reference at this stage can be made to the decision of the Hon'ble Supreme Court in the case of *Man Kaur (Dead) By LRs. Versus Hartar Singh Sangha, reported in (2010) 10 S.C.C. 512*, wherein the Hon'ble Supreme Court has enumerated the position of law about, who should give evidence in

regard to matters involving personal knowledge. A perusal of pleadings in the plaint would reveal that, same are within the confirmity of law. The record indicates that, the Power of Attorney Holder who is husband of plaintiff was having sufficient knowledge about the transactions entered into plaintiff and the respondent. The plaintiff has made a categorical statement that, her business was being looked after by her husband and son, though she is a proprietor of her firm. The affidavit of evidence in lieu of examination-in-chief filed by the Power of Attorney Holder of the plaintiff, therefore would fall in Clause (g) of para (18) of the decision of the Hon'ble Supreme Court in the case of *Man Kaur (Dead) By LRs. Versus Hartar Singh Sangha (supra)*.

7] In view thereof, this Court is of the view that, the Trial Court has not committed any error while passing the impugned Order.

There are no merits in the Petition and is accordingly dismissed summarily.

[A.S. GADKARI, J.]

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