

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

WRIT PETITION NO.1040 OF 2022

Parvati Sakharam Patil

..Petitioner

Versus

Sunanda Sakharam Patil and Anr.

..Respondents

Mr. Nikhil N. Pawar, for the Petitioner.

Mr. Umesh H. Pawar, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 15th MARCH, 2022

PC.

1. The prayer for setting aside impugned order dated 5th January, 2022 passed below Exh.88 is objected by the counsel for the respondents on following grounds :-

- (a) That the hearing of the suit was already concluded on 31st March, 2021 and the same was posted for citing judgments;
- (b) The powers under Order XVIII Rule 17 of the CPC are being invoked to fill up lacunas which are discovered during the course of arguments; and
- (c) The stage at which the application is moved, is not maintainable.

2. I have appreciated the said submissions.

3. The final hearing in the suit was concluded on 31st March, 2021 and same was adjourned because of pandemic and for citing judgments. Fact remains, till the order impugned was passed, the judgment in the suit was not delivered, rather the suit is required to be posted for rehearing in view of lapse of about one year between last hearing and the present stage.

4. In the aforesaid background, it cannot be said that the powers under Order XVIII Rule 17 of the CPC can't be invoked at the behest of the petitioner at the present stage, as the law on the said point is concluded in the matter of ***K. K. Velusamy Vs. N. Palanisamy*** reported in ***(2011) 11 SCC 275*** and ***Mukund Iron Staff Association Co-op. Housing Society Ltd., Bombay Vs. Vasant Ramchandra Patil*** reported in ***2015(4) Mh.L.J. 855***. Appropriate reliance can be placed on observations in the judgments of the Apex Court whereby the witness can be permitted to be summoned in the interest of justice under Order XVIII Rule 17 r/w 151 of the CPC at the behest of the party at any stage of proceedings.

5. In the facts of the present case, the plaintiff, old lady of 92 years has appointed Power of Attorney who was already examined. The fact that the suit is pursued through Power of Attorney was a fact within the knowledge of the respondents.

6. That being so, keeping in mind the law laid down by the Apex Court in the matter of ***Janki Vashdeo Bhojwani & Anr. Vs.***

Indusind Bank Ltd. & Ors. reported in ***2005(2) SCC 217***, petitioner is entitled to the relief of allowing the executor of the Power of Attorney to examine herself to the extent of proving the Power of Attorney and bringing on record as facts which were within her personal knowledge.

7. Needless to clarify that the respondents will be entitled for appropriate opportunity of hearing on the said issue including cross-examination of the said witness.

8. In the aforesaid background, order impugned dated 5th January, 2022 passed below Exh.88 is quashed and set aside subject to respondents/defendants withdraw Rs.15,000/- which is already deposited.

9. The petition stands allowed in above terms.

10. Needless to clarify that if the petitioner fails to conclude evidence within a period of four weeks from today, the Court below shall be at liberty to proceed ahead with the hearing of the suit ignoring the right of the petitioner to examine herself.

[NITIN W. SAMBRE, J.]