

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

WRIT PETITION NO.13939 OF 2019

**TAHEZIBBEE TAMIZUDDIN AND OTHERS THROUGH
SPECIAL P A NASRUN FATEMA LATIFUDDIN PIRZADE
VERSUS
FASIUDDIN NIYAZUDDIN PIRZADE THROUGH LRS
SHAHADATBI FASIUDDIN PIRZADE AND OTHERS**

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Mr. A. J. Patil, Advocate for the Petitioners.

Mr. G. V. Wani, Advocate for Respondent Nos.1 to 7.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 02nd FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. By this petition, the petitioners are aggrieved by the order dated 06.08.2019 passed by the Trial Court below Exhibit-139 in RCS No.128/2004, whereby the application filed by the plaintiffs for discarding the evidence affidavit filed on behalf of the petitioners/deponents came to be allowed on the ground that the deponents are not having personal knowledge of the suit and the deposition is not in respect of the facts done by her as a Power of Attorney holder.

3. Heard learned counsel appearing for the parties.

4. Learned counsel appearing for the petitioners has taken this Court to the affidavit of evidence of the petitioners/deponents wherein it has been specifically deposed that the petitioners have personal knowledge of the facts of the

case and due to the inability of the defendants to step into the witness box the deposition is by the petitioners.

5. Learned counsel in support of his submissions relies upon the decisions of the Apex Court in the case of ***A. C. Narayanan Vs. State of Maharashtra and Another; Criminal Appeal No.73/2007, dated 13.09.2023*** and ***Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd; Civil Appeal No.6790/2003, dated 06.12.2004***.

6. Per contra, learned counsel for the respondents submits that merely stating that Power of Attorney holder has personal knowledge of the Court is not sufficient for her to step into witness box. He would further submit that Power of Attorney holder is only a relative of the respondents and is not party to the proceeding and it is her case that the acts were done by her under the Power of Attorney, which has been granted by the defendants to the proceedings. In support of his submission, he relies upon the decision of this Court in case of ***Punjabrao Ramrao Ingle and Ors. Vs. Himmatrao Devrao Dhongde and Ors; Second Appeal No.333/2007, dated 15.4/3.7.2014***.

7. Considered the rival submissions of the parties.

8. RCS No.128/2004 has been preferred by the respondents for declaration, injunction and for correction of sale deed of 15.02.1982. The petitioner has filed her affidavit in lieu of examination-in-chief under Order XVIII Rule 4 of the Code of Civil Procedure and has deposed that the petitioner is the wife of respondent no.3 and being family member is in the knowledge of the fact of the case. She has further deposed that the suit

property is owned by defendants and is presently in the possession of defendants. A perusal of the affidavit of evidence shows that the deposition is as respects the facts which are within the personal knowledge of the Power of Attorney holder. The decision in case of ***Punjabrao Ramrao Ingle and Ors.*** (supra) relied upon by the learned counsel for the respondents deals with the entire law on the subject and the conclusion which has been drawn by this Court is that if Power of Attorney has personal knowledge of the acts done, he or she can certainly step into witness box to depose as to commission of such acts, else the Principal cannot withhold himself from deposing in respect of the acts done by him or which are within his personal knowledge.

9. Considering the judicial pronouncements, the Power of Attorney holder is entitled to depose in respect of the facts which are personal to the knowledge of the Power of Attorney holder and she cannot depose in respect of the facts which are within the personal knowledge of the Principal. To that extent the evidence of the Power of Attorney holder is not to be considered as it is the Principal himself, who will have to step into the witness box to depose as to the facts which are within his personal knowledge.

10. Considering the above, the impugned order dated 06.08.2019 rejecting the affidavit of evidence of the Power of Attorney holder on the ground that she is not having personal knowledge of the suit is hereby quashed and set aside.

11. The respondents are at liberty to cross-examine the Power of Attorney holder in order to bring on record that the facts

which are being deposed in the examination-in-chief are not personal to the knowledge of the Power of Attorney holder.

12. Writ Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE

Devendra/February-2023