



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

WRIT PETITION NO. 8949 OF 2023

Smt. Parbatidevi Rughlal Mundhra Petitioner
v/s.
Anil Bhagwandas Agrawal and anr. Respondents

Ms. Pooja Malik for the Petitioner.
Mr. Anoop Sharma for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 24th AUGUST, 2023.

P. C. :-

- . With consent, heard finally at the stage of admission.
2. The Petitioner herein has challenged the order dated 21/06/2023 whereby the learned Judge, Small Causes Court, Mumbai allowed the application filed by the Respondent No.2 and discarded the evidence of the Power of Attorney holder of the Petitioner-plaintiff.
3. The records reveal that the Petitioner who is a landlord, has filed a suit for eviction. The Petitioner is an octogenarian and being unable to manage the affairs, she executed a Power of Attorney in favour of her son and authorized him to depose on her behalf, pursuant to which the son of the Petitioner filed his affidavit in evidence.

4. The Respondent No.2 claims that the witness is not competent to depose on the basis of the POA executed on 05/04/2011.

5. Relying upon the decision of the Apex Court in ***Janki Vashdeo Bhojwani and another v/s. Indusind Bank Ltd. and others AIR 2005 SC 439***, the learned Judge held that the Power of Attorney holder can file formal evidence in pursuance of act done by him as power of attorney holder and he cannot depose on the facts which is only in the personal knowledge of principal.

6. It would be relevant to refer to the decision in ***Man Kaur (Dead) by Lrs v/s. Hartar Singh Sangha (2010) 10 SCC 512***, wherein the Apex Court has summarized the law as under :-

“ 18. We may now summarize for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal

knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this

category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad. "

7. In the instant case, the son of the landlord has filed an affidavit in evidence on the basis of Power of Attorney executed in his favour by his mother. The present case is squarely covered by paragraph 18(g) in the case of ***Man Kaur*** (supra) and hence, the impugned order cannot be sustained and is accordingly set-aside. Hence, the Petition is allowed.

(SMT. ANUJA PRABHUDESSAI, J.)