

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4690 OF 2024

Manohar Rajaram More

.. Petitioner

Versus

Jayshree Lalaso Gaikwad & Ors.

.. Respondents

-
- Mr. Sandeep S. Koregave for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 26, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe 26.08.2024.
3. Heard Mr. Koregave, learned Advocate for Petitioner.
4. Impugned order dated 11.08.2022 is under challenge. Petitioner is Contemnor / Respondent in a Contempt Petition before Trial Court. Contempt Petition is filed by Respondents before Trial Court. In that Contempt Petition, on behalf of Respondent her Constituted Power of Attorney i.e. her husband has filed Affidavit-in-lieu of examination-in-chief as far as back in the year 2016. This was objected to by Petitioner by filing Application below Exh.24 for passing no evidence order against Respondent. That Application is dismissed by order dated 27.09.2017 by Trial Court. Thereafter, Application for Review of

that order dated 27.09.2017 was filed by Petitioner, which has now been dismissed by the impugned order dated 11.08.2022.

5. According to Mr. Koregave, learned Advocate for Petitioner, such a course of action is impermissible in law and Contempt Petitioner will have to lead evidence by herself and not through her Constituted Attorney. Perusal of orders passed by Trial Court show that the Constituted Attorney of the Contempt Petitioner before the Trial Court is her husband who claims to be present at the relevant time during which the cause of action has arisen and hence he has filed his evidence as a PoA. The Court has returned a finding that he has knowledge about the concerned facts.

6. I have perused the impugned order. An arguable case is made out by Mr. Koregave for issuance of notice and calling for reply from Respondents. Hence, issue notice to the Respondents made returnable on 09.09.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the

Advocate for Petitioner. Respondents shall undoubtedly be heard on the above issue.

7. Respondents are directed to remain present either by themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

8. Stand over to **9th September, 2024.**

Amberkar

RAVINDRA
MOHAN
AMBERKAR
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by RAVINDRA
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Date:
2024.08.28
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[MILIND N. JADHAV, J.]