

**ORDER BELLOW EXH. 61 IN RCS No. 667/2012**

1. This is an application filed by defendant to lead evidence through General Power of Attorney holder. The defendant contended that he is suffering from paralysis since 2017. Therefore, he could not able to come before the court to conduct the matter and lead evidence. The Power of Attorney holder Sitaram Mohan Kale is son of the defendant. The Power of Attorney holder has a full knowledge about the suit property. Hence,he prayed for allowed the application.

2. Plaintiffs have filed their say below Exh.66 and thereby apposed the application. The plaintiffs contended that the application filed by the defendant is not maintainable. The reason regarding ill health of the defendant mentioned in the application is not correct and true. The documents which is medical certificate supported with the application is not correct. As per the medical certificate the defendant is not physically and mentally able on 10.06.2019 and the document regarding General Power of Attorney was executed on the same date. Hence, document is void abinitio. It is necessary to come on record the evidence of the defendant himself. Hence, the plaintiff prayed for rejection of the application.

3. Pursued the application and say and documents filed by the defendant regarding the seekness of the defendant. Heard both the sides at length.

4. This is an application filed by the defendant to lead evidence through General Power of Attorney. It appears from the

averment of the application that the relation between defendant and attorney holder is father and son. Further more the defendant is suffering from paralysis, B.P. and Sugar. Further more it is admitted fact that the age of the defendant is 70 years.

5. After perusal of record and document it prima facie shows that defendant is suffering from illness. The document of Power of Attorney shows that the attorney holder is son of the defendant and he is having knowledge about the suit land. In such circumstances it is just and necessary to consider the application in light of the documents.

6. It is well settled principle that evidence through General Power of Attorney is permissible as a witness on behalf of defendant or parties. So far as, admissibility and evidentiary value is concerned, it has to be determine at the time of hearing. In this case, the defendant only seeking permission to lead evidence through General Power of Attorney. No prejudice will cause to the plaintiff, if application is allowed.

7. Hon'ble Bombay High Court held in the Judgment reported in **Panjabrao Ramrao Ingle V/s. Himmatrao reported in LJ SOFT 2014 (10) 40 Equivallent. 2014(S) MHLJ 815**, that -

*"the General Power of Attorney can depose as witness to extent of which he or she knows about the case and not for the acts personally done by the principal of which he alone can have personal knowledge. If General Power of Attorney has personal knowledge of the act done, he or she can*

*certainly step into witness box as to commission of such act."*

8. Considering the above ratio laid down by Hon'ble Bombay High court and facts of the present case, the relation between the defendant and Power of attorney holder is father and son furthermore the Power of Attorney holder has knowledge for the suit property. Therefore, it just and necessary to allow the application. In the light of above I proceed to pass following order :

**-: ORDER :-**

The defendant is permitted to lead his evidence through General Power of Attorney.

Date :16/12/2019

(Smt. P. V. Raut),  
2<sup>nd</sup> Jt. Civil Judge, J.D.  
Newasa.