

ORDER BELOW EXH.69 IN RCS NO.57/2009**MHSI06-000541-2009**

1. Present application is filed by plaintiff by stating that, plaintiff is suffering from serious ailment in relation to his physical health. Therefore, he could not attend the dates fixed for hearing. Therefore, in such situation, he appointed power of attorney holder to his daughter namely Nancy Vhisent Ghonsalvis and prayed for permission to depose on affidavit of examination in chief.

2. Defendant objected the application by stating that, in view of ratio laid down by the Hon'ble Apex Court in the case of **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd.**, the power of attorney holder of a party to a litigation can not depose before Court on behalf of and instead of his/her principal. Hence, this application is liable to be rejected with cost.

3. Perused application and say. Heard both sides.

4. It is important to note that, citation referred by defendant in his say as to **Janki Vashdeo Vs. Indusind Bank Ltd.**, is referred in **Mohindar Kaur Vs. Sant Paul Singh** decided on 01-10-2019 by Hon'ble Justice Navin Sinha and Hon'ble Justice Indira Banarjee, it was held that, a power of attorney holder, who has acted in pursuance of the said power may depose on behalf of the principal in respect of such acts, but cannot depose for the principal for the act done by the principal and not by the power of attorney holder. Likewise, the power of attorney holder cannot depose for the principal in respect of matters of which the principal alone have personal knowledge and in respect of which the principal is entitled to be cross-examined. Present suit is filed for partition. Therefore, the personal act of the plaintiff are not in

question. Power of attorney can give the evidence as to the information within her knowledge and can be cross-examined by the defendant. No doubt, her deposition is independent and not on behalf of the plaintiff. Any such deposition can be objected by defendant during cross-examination. Therefore, no prejudice would be caused to defendant, if power of attorney holder allow to give evidence in present suit. Hence, I pass following order.

--: **ORDER** :: -

1. Application at Exh.69 is hereby allowed.
2. Power of attorney holder of plaintiff is allowed to lead his evidence.
3. Both parties take note.

(Dictated and Pronounced in open Court.)

Date:30/09/2023

Place:Sawantwadi.

(Smt. R.G.Kumbhar)

Jt. Civil Judge (J.D.),

Sawantwadi.

CERTIFICATE

I affirm that the contents of this P.D.F. filed judgment/order are same word to word, as per the original judgment/order.

Name of the Stenographer : U. B. Hundekar (Grade-3)

Court Name : Jt. C.J.J.D. & J.M.F.C.,
Sawantwadi.

Judgment/order signed by the
P.O.on : 30-09-2023

Judgment/order uploaded on : 30-09-2023