

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

**WRIT PETITION NO. 8295 OF 2020 (GM-CPC)**

BETWEEN:

SMT. ZAREENA TAJ  
W/O SYED AFSAR,  
AGE ABOUT 55 YEARS,  
NO 239, TELECOM LAYOUT,  
6<sup>TH</sup> CROSS, VIJAYANAGAR  
BANGALORE – 560 026.

...PETITIONER

(BY SMT. SUMAN HEGDE, ADVOCATE  
FOR SMT. SUDHA.B, ADVOCATE)

AND:

1 . SMT. SALEEMA BEGUM  
W/O LATE SYED PATCHASAHEB  
(S. SYED PATCHA)  
AGED ABOUT 79 YEARS,  
RESIDING AT NO 26,  
SURVEY NO. 50/1  
SARAKKI VILLAGE 14<sup>TH</sup> CROSS BEHIND  
NAGARJUNA APARTMENTS  
KANAKAPURA MAIN ROAD  
J. P. NAGAR 1<sup>ST</sup> PHASE  
BENGALURU – 560 079.

2 . SMT. MEHRUNNISSA  
W/O LATE AMEER JAN  
AGE ABOUT 83 YEARS  
RESIDING AT NO. 26,  
SURVEY NO 50/1,  
SARAKKI VILLAGE ,14<sup>TH</sup> CROSS,  
BEHIND NAGARJUNA APARTMENTS  
KANAKAPURA MAIN ROAD  
J. P. NAGAR 1<sup>ST</sup> PHASE  
BANGALORE – 560 078.

... RESPONDENTS

(BY SRI. H.S. CHANDRASHEKAR, ADVOCATE FOR R1;  
NOTICE TO R2- D/WITH, V/O DATED 13.10.2020)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 22.01.2020 PASSED ON IA NO.7 BY THE COURT OF CITY CIVIL AND SESSIONS JUDGE IN MISCELLANEOUS PETITION NO.470/2019 PRODUCED HERewith IS ANNEXURE-C AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:-

### **ORDER**

Petitioner's grievance is against the lower Court order whereby the respondents application in IA No.7 filed under order III Rules 1 & 2 of CPC, 1908 having been favoured, the son is empowered to depose on behalf of the respondent-mother on the ground that she is in the evening of her life and she has ailments natural to old age apart from having the impairment of sight & hearing. The short order reads as under:

*"Orders on IA NO 7*

*This is an application filed by the petitioner under order 2 rule 2 of CPC seeking to examine her power of attorney holder who is her son and thereby prosecute the matter and memo stated, she is having eye sight and hearing problem and suffering old age alignments. R1 filed his objection considering the relationship b/w petitioner and her PA holder and also the primary burden is on the petitioner to establish her claim if this application is allowed. No hardship could be caused to R1 who is always having liberty to cross examine petitioner PA holder considering the medical records and also*

*age of petitioner and provision under order 3 rule 2 and also principle let down by the Hon'ble High Court of Karnataka in ILR 2015 635. I proved to from the following:*

*Orders:*

*I.A.no.7 filed by the petitioner under order 3 rule 2 CPC is allowed call on for the petitioner evidence."*

2. After service of notice, the respondents having entered appearance through their counsel, resist the writ petition making submission in justification of the impugned order and the crisp reasons on which it is structured.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter inasmuch as, the learned judge of the Court below in his discretion and wisdom, has made the impugned order in accordance with the rules of reason & justice; such orders ordinarily do not merit a deeper examination at the hands of the Writ Court exercising its restrictive supervisory jurisdiction vested under Article 227 of the Constitution of India, vide *SADHANA LODH Vs. NATIONAL INSURANCE CO. LTD.*, (2003) 3 SCC 524.

4. The learned judge has made the impugned order after adverting to the decision of this Court in the case of SAJIDA BANU VS. HALIMA BANU AND OTHERS, ILR 2015 KAR 635, which has a bearing on the facts of the case at hands; this apart, the person who is authorized to depose is none other than son of the respondent and therefore, the contention that he may not have personal knowledge of the matter, cannot be readily countenanced.

5. After all, whether the person who is asked to depose on behalf of a party to the proceeding has personal knowledge or not is a matter to be ascertained after he enters the witness box and deposes, subject to all just exceptions; if his deposition shows that he does not have personal knowledge, the court below would take a decision for escuing his evidence or any part thereof.

In the above circumstances, this writ petition is disposed off with the aforesaid observations.

No costs.

**Sd/-  
JUDGE**

Bsv