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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1942 OF 2025
WITH
INTERIM APPLICATION NO. 6849 OF 2026
IN
FIRST APPEAL NO. 1942 OF 2025

Maharashtra State Road Development Corporation

Ltd., Mumbai

...Appellant/Applicant

Versus

Shree Kishan Lal S. Attakan

...Respondent

Mr. Vishal Chandrakant Ghosalkar, for Appellant.

None for Respondent.

CORAM: AARTI SATHE, J.

DATE: 09 OCTOBER 2026

P.C.:

1. This Interim application has been filed praying for the following reliefs:-

a) This Hon'ble Court be pleased to allow the applicants' application under order XLI rule 27 of the CPC, 1908 and the applicant be permitted to produce the original documents in support of its claim for loss of which copies are produced at Exhibit "1" to "3" herein.

b) Cost of the application be provided.

c) Any other relief's as deems fit and proper to this Hon'ble Court.

2. The present First Appeal challenges the Judgment and Decree dated 09 April 2025, passed by learned Judge City Civil Court, Bombay (hereinafter referred to as 'trial Court) whereby the claim of the Appellant towards compensation for the loss sustained, together with interest thereon, was partly reduced by modifying the rate of interest from 18% to 12%, notwithstanding the

written agreement between the parties.

3. Briefly stated, the facts giving rise to the present Appeal are that the Appellant in the year 2005 had invited public tenders for the operation and management of the Pay and Park Scheme situated below the National Park Flyover at Borivali, on the Western Express Highway. Pursuant thereto, the Appellant issued a Letter of Acceptance in favour of the Respondent on 28 October 2005.

4. Pursuant thereto, on 09 November 2005, the Respondent paid the first annual licence fee in advance, amounting to Rs.25,92,593/-, along with performance security of Rs. 12,96,297/-.

5. Thereafter, on 01 December 2005, a formal agreement was executed between the Appellant and the Respondent, pursuant to which a work order was also issued in favour of the Respondent.

6. On 03 December 2005, the Respondent commenced the operation and management of the Pay and Park Scheme situated beneath the National Park Flyover at Borivali, on the Western Express Highway. The contract was for a period of three years and was due to expire on 02 December 2008.

7. It is the Appellant's contention that, on 09 December 2005, the Respondent raised an untenable claim seeking a reduction in the contractual amount on the ground that all the spans designated for the Pay and Park Scheme were not available. The Appellant rejected the said claim. However, the Respondent continued to raise similar claims thereafter.

8. The Appellant terminated the contract awarded to the Respondent on 26 February 2007. In view of the aforesaid termination, it is the Appellant's contention that the Respondent became liable to pay the Appellant a sum of Rs.27,25,561/-.

9. On account of the Respondent's failure to pay the aforesaid outstanding dues, the Appellant caused the Respondent to be evicted from the site through an external agency, thereby incurring expenses which form part of the claim lodged by the Appellant before the Trial Court.

10. On 05 September 2007, the contract was awarded to another agency. It is the Appellant's contention that, owing to the intervening period during which the site remained without a new contractor, the Appellant suffered losses for the period from 02 August 2007 to 04 September 2007.

11. A final notice calling upon the Respondent to pay the aforesaid amount of Rs. 27,25,561/- was issued by the Appellant. However, the Respondent rejected the said demand.

12. Thereafter, the Appellant instituted a Suit before this Court, which was subsequently transferred to the City Civil Court on account of the enhancement of the pecuniary jurisdiction. The Respondent filed their written statement, and evidence was led on behalf of the Appellant.

13. By a Judgment and Decree dated 09 April 2025, the Trial Court partly allowed the claim. Being aggrieved by the said Judgment and Decree, the Appellant has preferred the present First Appeal. The Interim Application has been

taken up primarily for the purpose of bringing on record additional evidence in the form of bids received by the Appellant from other bidders following the termination of the contract with the Respondent.

14. The aforesaid bids include a bid submitted by AA Auctioneers and Contractors Pvt. Ltd. for a sum of Rs. 28,80,000/-, a bid submitted by Rajendra Srichand Attakan for a sum of Rs. 55,55,555/-, and a bid submitted by Navi Mumbai Auto Traders for a sum of Rs. 50,00,000/-.

15. The Appellant submits that the aforesaid documents have a material bearing on the determination of the loss sustained by the Appellant on account of the termination of the contract with the Respondent.

16. The Appellant further submits that, in view of the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908, this Court is empowered to admit additional evidence, subject to the satisfaction of the conditions prescribed therein.

17. In the present Interim Application, the Appellant has also averred that, during the earlier proceedings, this Court had raised a query as to why the Appellant had not produced the material indicating the number of other parties who had submitted bids pursuant to the invitation of tenders after the termination of the contract with the Respondent, for the purpose of appointing a new contractor.

18. Having considered the aforesaid submissions and upon perusal of the averments made in the Interim Application, this Court is of the view that the

request for permission to lead additional evidence deserves to be allowed in terms of Order XLI Rule 27 of the Code of Civil Procedure, 1908.

19. The relevant provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908, are reproduced hereinbelow:

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —
 (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
 1[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]
 (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
 (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

20. Upon a reading of the aforesaid provisions, it is clear that an application for production of additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908, may be allowed by the Appellate Court upon satisfaction of the following conditions:

- (i) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted;
- (ii) The party seeking to produce additional evidence establishes that, notwithstanding the exercise of due diligence, such evidence was not within its knowledge or could not, after the exercise of due diligence, have been produced at the time when the decree appealed against was passed; or

(iii) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

21. Considering the aforesaid conditions, this Court is of the view that, in the facts and circumstances of the present case, the third condition stipulated under Order XLI Rule 27 of the Code of Civil Procedure, 1908, is attracted. The additional evidence sought to be brought on record is necessary to enable this Court to pronounce judgment and effectively adjudicate the present Appeal.

22. Further, this Court is of the view that the additional evidence, in the form of fresh competing bids received by the Appellant, would assist in determining the loss, if any, sustained by the Appellant on account of the termination of the contract with the Respondent.

23. This Court is also of the view that the additional evidence, if taken on record, would assist in determining the difference between the amount payable under the earlier contract, which was terminated, and the amount offered by the highest bidder who was subsequently appointed by the Appellant as the new contractor. Such evidence would be relevant in assessing the loss, if any, sustained by the Appellant in the present case.

24. In view of the aforesaid, this Court is of the view that the additional evidence deserves to be taken on record in exercise of the powers under Order XLI Rule 27 of the Code of Civil Procedure, 1908. The Interim Application is accordingly allowed in terms of prayer clause (A).

25. The Interim Application stands disposed of in the above terms.
26. List the First Appeal on **20 November 2026**.

(AARTI SATHE, J.)