IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2211 OF 2015 WITH
CIVIL APPLICATION NO.8049 OF 2015

NARESH S/O RAMESH JAISWAL AND ANOTHER — PETITIONERS

VERSUS

EKBALKHAN S/O MEHABOOBKHAN AND OTHERS — RESPONDENTS

Mr.S.S.Dixit, Advocate for the petitioners.
Mr.P.R.Patil, Advocate for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 22/07/2015

PER COURT :

1. While issuing notice to the respondents, this Court had passed an order on 02/03/2015, which reads as under :-

> *"1. The petitioner is aggrieved by the order passed by the Appeal Court dated 31-01-2014 by which the application to produce additional evidence has been turned down.*
>
> *2. It is contended that in the light of the ratio as is laid down by the Apex Court in the case of State of Rajasthan Vs. T.N. Sahani, reported at (2001) 10 SCC 619, additional evidence sought to be placed on record under Order 41 Rule 27 of the Code of Civil Procedure (CPC) by an application, needs to be considered along with the appeal and cannot be decided in isolation.*
>
> *3. This Court (**Coram :- S.V. Gangapurwala, J.**) in the*

*judgment dated 17-04-2012 delivered in Writ Petition No.7095 of 2011 in the matter of Dattu S/o Patilbuva Raut Vs. Patilbuva S/o Maroti Raut deceased through L.Rs. & others has relied upon the judgment in the case of State of Rajasthan (supra) and in the case of Mallyalam Plantation Ltd. Vs. State of Kerala and another, reported at 2011 AIR SCW 264. Similar view has been taken by this Court (**Coram:- S.S. Shinde, J.**) in its order dated 25-07-2012 in Writ Petition No. 144 of 2012 in the matter of Shamshoddin Sardaroddin Kazi & Anr. Vs. Limba Eknath Fawade died Thr. L.Rs. Vilas and others.*

4. When called upon, learned Advocate for the petitioners frankly stated that these reports referred above, were not cited before the Appeal Court when the order dated 31-10-2014 was passed.

5. Issue notice before admission to the respondents, returnable on 01-04-2015.

6. In the light of the above, till the next date of hearing in the matter, the Trial Court shall not proceed with R.C.A. No. 213 of 2010 subject to the petitioners depositing an amount of Rs. 10,000/- (Rs. Ten thousand only) before the Appeal Court on or before the 20th day of March, 2015.

7. Needless to state that, the appeal has been stayed only on the condition of depositing the above said amount by the petitioners."

2. Mr.Patil, learned Advocate on behalf of the respondents submits that the application Exh.14, which has led to the passing of the impugned order, was filed by the petitioners at a stage when Reg.Civil Appeal No.213/2010 was posted for advancing final arguments and for disposal. Since application Exh.14 was filed and the petitioners insisted for a hearing, the Appellate Court has rejected the said application by the impugned order dated 31/10/2014.

3. Mr.Patil, however, fairly submits that the judgments referred to in paragraph No.3 of the order dated 02/03/2015 passed by this Court, as reproduced hereinabove, would be squarely applicable to the said case.

4. In the light of the above, this petition is partly allowed. The impugned order dated 31/10/2014 is set aside only for the reason that application Exh.14 should have been decided alongwith the appeal in the light of the Law referred to in paragraph No.3 of the order, reproduced above.

5. As such, application Exh.14 is restored to the file of the Appeal Court for a decision alongwith the main appeal.

6. Since the appeal has been instituted in 2010, the learned Appeal Court shall decide RCA No.213/2010 as expeditiously as possible and preferably on or before 16/09/2015.

7. The petitioners have assured this Court that on the first approaching date before the Appeal Court, the petitioners shall advance final arguments on the appeal as well as Exh.14 and shall not seek any adjournment.

8. The costs of Rs.10,000/- (Rs.Ten thousand only) deposited before the Appeal Court shall be withdrawn by the respondents in equal proportion with accrued interest and without any conditions, subject to proof of identity to the satisfaction of the Appeal Court. Needless to state, the Appeal Court shall decide the appeal and Exh.14 on its own merits since this Court has not passed any observations.

9. Pending civil application, does not survive, hence disposed of.

(RAVINDRA V. GHUGE, J.)