

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 3485 OF 2014

Mustaq s/o Gafoorsaab Shaikh,
age 33 years, occup. Business,
R/o Pakiza Saw Mill,
Babgalgaon Road, Latur.

... Petitioner

versus

01. Fatarusaheb s/o Rasulsaheb Shaikh
Age 53 years, occup. Business,
R/o Tajoddin baba Nagar, Sale Galli,
Latur.

2. Farook s/o Kasim Sahab Shaikh,
Age 43 years, occup. Business,
(president, Latur Ekta Furniture &
Saw Mill Sangh),
R/o Kazi Public Weight Bridge,
Treaching Ground , Babhalgaon Road,
Latur.

[Respondents no.2 and 3 deleted as
per court's order dated 07--8-2015]

3. Chief Officer, Nagar Parishad,
Latur.

.... Respondents

Mrs.Fatema Kazi, Advocate h/f Mr. S.S.Kazi, Advocate for petitioner
Mr. G. R. Sayed, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.
10th August, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the parties finally,
by consent.

2. Application Exhibit-30 in regular civil appeal bearing no. 217 of
2010 pending before the Ad-hoc District Judge-1, Latur had been
moved for production of documents, particularly map of the suit plot
bearing no. 6 of trenching ground, Babhulgaon, Latur. Production of
map was allowed by order dated 17-01-2014 which is impugned in this
writ petition.

3. In the present case, it appears that copies of the documents/map had been produced before the court, albeit, those were not certified copies and as such an attempt is being made under the application to produce the same. The appellate court has observed its relevance to the matter.

4. After hearing learned counsel for the parties and perusal of the impugned order passed by the appellate court, it appears that the application has been given a treatment pursuant to Order XLI, Rule 27 of the Code of Civil Procedure, 1908 and if that be so, there appears to be substantial force in the contention of the petitioner that such applications are required to be heard at appropriate stage of hearing of the regular civil appeal.

5. Learned counsel for the petitioner relies on the judgment in *Union of India vs. Ibrahim Uddin and another*, (2008) 8 SCC 148, particularly on paragraph number 41 of the same observing that application for additional evidence on record at an appellate stage is to be heard at the time of hearing of appeal when on appreciation of evidence court reaches the conclusion that additional evidence is required to be taken on record.

6. Learned counsel for respondent no.1 fairly refers to a division bench judgment of this court in *Hasanate Taheriyyah Fidayyiah through its Trustee Shri Zohairbhai s/o Late Sheikh Abdul Hussain vs. Mahesh s/o Kishor Saran*, 2014 (2) Mh.L.J. 884, following and observing said ratio as by the apex court in aforesaid matter in respect of such application.

7. Having regard to the same, it would be appropriate that said application be considered pursuant to Order XLI, Rule 27 of the Code at the time of hearing of the appeal. While doing so, it would be open for appellate court to consider its relevance as has been observed in the impugned order.

8. Under the circumstances, impugned order dated 17-01-2014 passed by Adhoc District Judge-1, Latur on Exhibit-30 in regular civil appeal no. 217 of 2010 is set aside. Application Exhibit-30 be heard afresh at the time of hearing of appeal pursuant to the orders of the apex court and high court referred to hereinabove.

9. Writ petition accordingly stands allowed. Rule made absolute accordingly.

SUNIL P. DESHMUKH, J.

pnd