

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9351 OF 2014

Nagabai W/o Madhavrao Shindalkar,
Age: 85 years, occu: Household,
R/o Meghraj Nagar, Latur,
Tq. and Dist. Latur.

...PETITIONER
(Ori. Plaintiff)

versus

1. Dr. Uttam S/o Amrutrao Gaikwad,
Age: 48 years, Occu: Business,
2. Chandrakala @ Baby W/o Uttam Gaikwad,
Age: 42 years, Occu: Household,

Both R/o Meghraj Nagar, Latur,
Tq. And Dist. Latur.

...RESPONDENTS
(Ori. Defendants)

.....
Mr. S.S. Deshmukh (Patnurkar), Advocate for Petitioners
Mr. G.N. Chincholkar, Advocate for respondents
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 2nd SEPTEMBER, 2015

Order :-

1. This writ petition has been moved by original plaintiff against order dated 12-09-2014, on Exhibit-50 in Regular Civil Appeal No. 109 of 2013 passed by Principal District Judge, Latur, whereunder application Exhibit-50, of present respondents – appellants - original defendants for production of additional evidence pursuant to Order XLI, Rule 27 of the Code of Civil Procedure, has been allowed.

2. Heard learned counsel for the parties. Short question involved in present matter is, whether appellate court could have granted

application Exhibit-50 moved by the appellants seeking production of additional evidence with reference to Order XLI, rule 27 of the Code of Civil Procedure, at a stage before hearing of the appeal.

3. Learned counsel for petitioner submits that having regard to prevailing position of law flowing from Supreme Court's judgment, in the case of *Malyalam Plantations Ltd. Vs. State of Kerala and another* reported in *AIR 2011 Supreme Court, 559* which has been followed by the division bench of this court at Nagapur in a decision in case in the case of *Hasnate Taheriyyah Fidayyiah through its Trustee Shri Zoharibhai S/o Late Sheikh Abdul Hussain Vs. Mahesh Kishor Saran*, reported in 2014 (2) *Mah. L.J. 884*, application Exhibit-50 could not have been decided before hearing of appeal had commenced.

4. Learned counsel for respondents, however, contends that the documents, which are sought to be produced by way of additional evidence are the certified/original copies of the documents already on record, which could not be considered in evidence for want of certified copies or originals thereof. Having regard to the same, the court had allowed Exhibit-50. It is not a case that entirely new evidence is introduced.

5. Taking into account purport and reasons which are underlying the decisions of the Supreme and High Courts, it appears to be prevailing legal position that application pursuant to Order XLI, Rule 27 of the Code of Civil Procedure is necessary to be considered while appeal is being heard. In view of the same, I deem it appropriate to set

aside the impugned order.

6. Accordingly, impugned order dated 12-09-2014, on Exhibit-50 in Regular Civil Appeal No. 109 of 2013 passed by Principal District Judge, Latur stands set aside. Exhibit-50 stands restored to its position as had been subsisting immediately before passing of impugned order. Exhibit-50 shall be considered, having regard to the decisions of Supreme Court and High Court, during hearing of appeal. While doing so, it would be open for the appellate court to consider the reasons weighed while impugned order dated 12-09-2014 on Exhibit-50 had been passed if it thinks relevant and proper after hearing the parties.

7. Writ petition, as such, stands allowed in aforesaid terms and disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK