

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO. 22887 OF 2014

Shri. Subhash Sheti Pawar

.. Petitioner

Versus

Sou. Minakshi Ravindra Zadbuke and others .. Respondents

Mr. Ajay A. Joshi, Advocate for the Petitioner.

**Mr. Amit B. Borkar i/b Mr. Amit M. Shete, Advocate for Respondents
No.1 to 4.**

CORAM : R.M. SAVANT, J.

DATE : 08th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 16.08.2014 passed on Exh.20, order dated 20th June, 2014 passed on Exh.26 and order dated 16.08.2014 passed on Exh.34. By the said orders the said applications filed by the original Plaintiffs for production of documents at the appellate stage came to be allowed. The principal contention urged on behalf of the Petitioner i.e. the original Defendant is that the said orders are non-speaking orders which do not cite the reasons for which the Lower Appellate Court deemed it fit to allow the said applications. Both the learned counsel are agreeable to the impugned orders being setting aside and the matter being relegated back to the

Lower Appellate Court for de-novo consideration of the said applications. However, in so far as the Petitioner is concerned, the learned counsel Shri. Ajay A. Joshi states that the said applications would have to be heard at the time of the Appeal and not earlier and in support of the said contention relies upon the judgment of the Apex Court reported in **(2012) 8 SCC 148** in the matter of **Union of India Vs. Ibrahim Uddin and another**. Wherein, the Apex Court has held that an application under Order 41 Rule 27 for production of additional evidence would have to be considered at the time of hearing of the Appeal. Paragraphs 49 and 52 of the said report are material and are produced hereunder for the sake of ready reference-

“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/ bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court.

52. Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/ inexecutable and is liable to be ignored.”

2. In view of the judgment (supra) of the Apex Court, the said applications would therefore, have to be heard at the time of the hearing of the Appeal. With the aforesaid directions, the above Writ Petition is disposed off.

[R.M. SAVANT, J]