

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

WRIT PETITION NO.10216 OF 2015

Shivaji Nivrutti Patil and others

.. Petitioners

Versus

Anandrao Baburao Patil and others

.. Respondents

Mr. Pratap Patil, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 28th OCTOBER, 2015

PC.

1. The order dated 03.10.2015 passed by the Learned District Judge-II, Islampur, rejecting the application Exh.37 filed by the Appellants i.e. the Petitioners herein under Order 41 Rule 27 of the CPC is taken exception to by way of the above Petition. A perusal of the said application Exh.37 which is hand written, discloses that it is bereft of any reasons mentioned therein as to why the Appellants desire to lead additional evidence and as to why their case falls under Order 41 Rule 27 of the CPC. The Lower Appellate Court as the impugned order discloses has rejected the said application precisely for the said reason. The Learned Counsel for the Petitioners i.e. original Appellants submits that the Petitioners/original Appellants should not suffer for the fault of their advocate and therefore makes a statement that the Appellants would withdraw the application

Exh.37 and file a proper application for being permitted to lead additional evidence under Order 41 Rule 27 of the CPC. In view of the said statement, it is not necessary to consider the impugned order on merits. The impugned order is accordingly set aside. The Petitioners herein i.e. Appellants in the Lower Appellate Court are at liberty to file an appropriate application invoking Order 41 Rule 27 of the CPC for leading additional evidence. If any such application is filed within four weeks from date, the Lower Appellate Court would consider the same on its own merits and in accordance with law uninfluenced by the fact that an earlier application was rejected. With the aforesaid observations, the Writ Petition is disposed of.

[R.M. SAVANT, J]