

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5717 OF 2014

Prabhakar Nathoo Bhavsar.] ... Petitioner

Versus

D. B. alias Babasaheb Balasaheb Takavane] ... Respondent

Mr. Ganesh A. Badri for Petitioner.

Ms. Pratibha Borade i/b A. S. Rao for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- JULY 10, 2015

P. C. :-

1. Rule.

2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.

3. This petition challenges order dated 31/01/2014, by which the District Judge-3, Kalyan (Appeal Court) has rejected the Petitioner's application under Order 41 Rule 27 of the CPC seeking leave to adduce additional evidence at the appeal stage.

4. The Hon'ble Apex Court, in the case of ***Union of India Versus Ibrahim Uddin and Another***¹, has held that an application under Order 41 Rule 27 CPC is to be considered at the time of hearing of the appeal on merits so as to find out whether the document and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. In para nos.49 and 52, the Hon'ble Apex Court has observed thus :-

“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 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

¹ (2012) 8 Supreme Court Cases 148

becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh² and Natha Singh and Ors. v. The Financial Commr., Taxation³.)

52. *Thus, from the above, it is crystal clear that 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 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.”*

5. In view of the aforesaid legal position, the Appeal Court is directed to consider the Petitioner's application under Order 41 Rule 27 CPC at the time of final hearing of the appeal. Accordingly, the impugned order dated 31/01/2014 passed below Exh.20 in Civil Appeal No.12 of 2012, is set aside.

² AIR 1951 SC 193

³ (1976) 3 SCC 28 : AIR 1976 SC 1053

6. It is made clear that this Court has not set aside the aforesaid order dated 31/01/2014 on its merits but only on the ground that the application under Order 41 Rule 27 CPC ought to have been considered at the stage of final hearing of the appeal. Therefore, all contentions of all parties are specifically kept open. The Appeal Court to consider and decide the application under Order 41 Rule 27 CPC in the light of the observations of the Hon'ble Apex Court in the case of in the case of ***Union of India Versus Ibrahim Uddin and Another*** (*supra*).

7. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)