

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6493 OF 2015

Balmukund Natwarlal Kantawala and Ors.] ... Petitioners

Versus

Bhoja Angara Shetty and Ors.] ... Respondents

Mr. Darshit Jain a/w Ms. Minal i/b Divya Jain & Shweta Jain for
Petitioners.

Mr. E. K. Sasidharan for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 29, 2015

P. C. :-

1. Rule.
2. By order dated 07/10/2015, it was made clear that
endeavour shall be made to dispose of this matter finally at the stage
of admission.
3. The challenge in this petition is to the orders dated
27/01/2014 and 16/03/2015 by which the Appeal Court has rejected
the petitioners' application under Order 41 Rule 27 of CPC for
production of additional evidence/documents.

4. At this stage, it is not necessary to enter into the merits. This is because applications under Order 41 Rule 27 of CPC are required to be considered by the Appeal Court 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 Appeal Court was therefore not right in taking up the application for consideration at a stage prior to the hearing of the appeal on merits.

5. The Hon'ble Apex Court, in the case of ***Union of India Versus Ibrahim Uddin and Another***¹, at paras 49 and 52, has held 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

¹ (2012) 8 Supreme Court Cases 148

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. (Vide: Arjan Singh v. Kartar Singh² and 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.”

² AIR 1951 SC 193

³ (1976) 3 SCC 28 : AIR 1976 SC 1053

6. In view of the law laid down by the Hon'ble Apex Court, the impugned orders dated 27/01/2014 and 16/03/2015 are set aside. The Appeal Court is directed to consider the petitioners' application under Order 41 Rule 27 of CPC afresh, but at the stage of hearing of the appeal on merits and in accordance with the aforesaid observations of the Hon'ble Apex Court.

7. The learned Counsel for petitioners points out that by application dated 16/03/2015, the petitioners had applied for leave to produce record and proceedings in probate proceedings which were at that stage pending. The learned Counsel for petitioners points out that the said proceedings have now been disposed of and a probate has already been issued. The learned Counsel for petitioners states that leave ought to be granted to produce this probate as well before the Appeal Court. There is no question of this Court granting any leave. However, it shall be open to the petitioners to make yet another application under Order 41 Rule 27 of CPC in relation to such probate and such application, if made within a period of four weeks from today, shall be considered by the Appeal Court, again in accordance with law and at the stage of hearing of appeal on merits.

8. It is made clear that this Court has not examined the merits of the applications under Order 41 Rule 27 of CPC made by the petitioners and therefore, all contentions of all parties in this regard have been left open. The Appeal Court to decide such applications in accordance with law and on their own merits.

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

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

(M. S. SONAK, J.)