

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9217 OF 2013

Shri Poonam Karnawat.	]	... Petitioner/ (Orig. Plaintiff)
Versus		
Shri Suresh R. Sekhri and Ors.	]	... Respondents/ (Orig. Defendants)
 Mr. Kayval P. Shah for Petitioner. Mr. Ketan Parekh for Respondent Nos.1 and 2.		

CORAM :- M. S. SONAK, J.
DATE :- JUNE 09, 2015

P. C. :-

1. Mr. Kayval P. Shah, learned Counsel for Petitioner, seeks leave to delete Respondent Nos.2 to 9 from the array of Respondents, as their presence is not required for the purposes of deciding the present petition. Leave granted. Amendment to be carried out forthwith.
2. Heard the learned Counsel for parties.
3. Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for parties.

4. This petition is directed against the order dated 08/08/2013 made by the Appellate Bench of the Small Causes Court, Mumbai, rejecting Petitioner's application under Order 41 Rule 27 of the CPC seeking to produce additional evidence/documents at the stage of appeal.

5. There is no necessity to decide whether additional documents/evidence were required to be permitted to be adduced at the appeal stage, because in my judgment, the application under Order 41 Rule 27 of the CPC was required to be decided by the Appellate Bench at the time of the final hearing of the appeal if after appreciating the evidence on record, the Bench were to reach the conclusion that additional evidence was required for pronouncing the Judgment or for any other substantial purpose. To be fair to the Appellate Bench, the Appellate Bench, in para 19 of the impugned order, has itself observed that since appeal is at the stage of hearing, the observations in the impugned order should be taken as limited to the issue of deciding the application under Order 41 Rule 27 of the CPC.

6. The Hon'ble Supreme Court, in the case of *Union of India Vs. Ibrahim Uddin and Another*¹, at para 52, in the context of dealing with applications under Order 41 Rule 27 of the CPC, has observed thus :-

¹ (2012) 8 Supreme Court Cases 148

“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/in executable and is liable to be ignored.

53. In the instant case, the application under Order 41 Rule 27 CPC was filed on 6-4-1998 and it was allowed on 28-4-1999 though the first appeal was heard and disposed of on 15-10-1999. In view of law referred to hereinabove, the order dated 28-4-1999 is just to be ignored.”

7. In the aforesaid circumstances, the interest of justice would be met if the impugned order dated 08/08/2013 is set aside and directions are issued to the Appellant Bench to take up for

consideration the Petitioner's application under Order 41 Rule 27 of the CPC at the stage of final hearing of the appeal in the light of the observations of the Hon'ble Apex Court in the case of *Union of India Vs. Ibrahim Uddin and Another (supra)*. It is ordered accordingly.

8. Rule is made absolute to the aforesaid extent. It is clarified that this Court has not gone into the merits of the matter and accordingly all issues are left open for decision by the Appellant Bench in terms as aforesaid.

9. In the facts and circumstances of the case, there shall be no order as to costs.

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

(M. S. SONAK, J.)