

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7905 OF 2015

Avinash s/o Arunrao Deshmukh
Age 39 years, Occ. Agri. And
Medical practitioner
R/o. Katpur,
Tq. and District Latur

...Petitioner

versus

Rajabhau Manikrao Deshmukh
Age 58 years, Occ. Agriculture
R/o. Katpur
Tq. and District Latur

...Respondent

...
Advocate for Petitioner Mr. Salunke Sudarshan J.
Advocate for Respondents : Mr. V.D. Gunale
.....

CORAM : V. K. JADHAV, J.
DATED : 1st MARCH, 2016

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent, heard finally at admission stage.

2. The petitioner-original plaintiff instituted a suit bearing R.C.S. No. 580 of 2008 for decree of possession. The said suit was decreed in terms of its prayers. Being aggrieved by the same, the respondent-defendant preferred Regular Civil Appeal No. 8 of 2013 before the District Court, Latur. During pendency of said appeal, the respondent-original defendant filed an application for production of

additional evidence. By way of additional evidence, the respondent sought for production of copy of judgment passed in Regular Civil Suit No. 225 of 2009 dated 30.7.2012 and copy of judgment in Regular Civil Appeal No. 58 of 2013 dated 27.1.2015. The application was resisted by the present petitioner. The learned District Judge-4, Latur by impugned order dated 28.4.2015 allowed the said application Exh.22. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the application for production of additional evidence under Order XLI Rule 27 of Code of Civil Procedure has to be considered alongwith appeal, as is laid down by the Hon'ble Supreme Court in the case of ***Union of India vs. Ibrahim Uddin and Anr, reported in 2013 AIR SCW 2752 (1)*** and ***Mallyalam Plantation Ltd. V/s State of Kerala & Anr. reported in 2011 AIR SCW 264***. Learned counsel for the petitioner also places his reliance on the decision rendered by this Court on 3.2.2014 in writ petition No. 7756 of 2013.

4. Learned counsel for the respondent-original defendant submits that in R.C.S. No.225 of 2009 the respondent-original defendant was party and Regular Civil Appeal No. 58 of 2013 arises out of said R.C.S. No. 225 of 2009. Learned counsel submits that said Regular Civil Appeal No. 58 of 2013 was disposed of on 27.1.2015 and

therefore, by way of additional evidence, respondent-defendant sought production of same before the lower appellate court. Learned counsel submits that the lower appellate court has rightly allowed the application Exh.22 and there is no substance in the writ petition and writ petition thus liable to be dismissed.

5. On perusal of impugned order passed below Exh.22, it appears that the lower appellate court at this premature stage has almost discussed the merits of appeal, even though the appeal is yet to be heard on merits and accordingly allowed the application Exh.22.

6. In view of provisions of Order XLI Rule 27 (1) (b) of C.P.C. if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce the judgment, or for any other substantial cause it may allow such evidence or document to be produced, or witness to be examined.

7. In view of this, the lower appellate court may keep application Exh.22 in abeyance and at the time of final hearing of the appeal, if the documents sought to be produced by way of application Exh.22 requires so as to enable the appellate court to pronounce the judgment, then the appellate court may consider the said application.

In the light of the above discussion, following order is passed:-

ORDER

- I. Writ petition is hereby partly allowed.
- II. The order dated 28.4.2015 passed by learned District Judge-4, Latur below Exh.22, in Regular Civil Appeal No. 8 of 2013 is hereby quashed and set aside.
- III. The lower appellate court is hereby directed to keep the application Exh.22 in abeyance and pass appropriate order on the said application at the time of final hearing of appeal on merits.
- IV. Rule is made absolute in the above terms. Writ petition is disposed of. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

