

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

**CIVIL APPLICATION (ST) No.16418 of 2016
IN
CIVIL REVISION APPLICATION NO. 1200 OF 2014**

Somprakash Rambabu Agrawal

..Applicant

Vs

Shri Bholedasji Temple and Ors

.. Respondents

Mr. Pramod N. Joshi, Advocate for Applicant.

Mr. Milind M. Sathaye, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 27/06/2016

PC:

1. Heard Mr. Pramod Joshi, learned counsel for the applicant and Mr. Milind Sathaye, learned counsel for the respondents at length.

2. By this application, the applicant-defendant has prayed for production of additional evidence under Order 41, Rule 27 of C.P.C. In paragraph 7, it is asserted thus:

“7. The petitioners moreover submit that there is ample space available to the respondents which can be used, for the purpose of reconstruction and making available more space to the devotees of the Hanuman Temple. The petitioners in this respect submit that the respondents have got another premises which was obtained by him during the pendency of the above proceedings, therefore additional requirement of the space for reconstruction has already been available with the respondents and, therefore, the said requirement as applied in the present proceedings, no longer survives. The petitioners in this respect, submit that

the respondents have already received substantial portion of someone Tenant Tambe and, therefore, the requirement of the respondents does not no more survives.”

Perusal of paragraph 7 shows that the applicant-defendant has merely stated that the respondents (plaintiffs) have got another premises which was obtained by them during the pendency of the above proceedings. In short, the defendant has not given any particulars, namely, about the premises which are obtained by the plaintiffs, when they were obtained and area of that premises, whether they are suitable or not. The applicant has further asserted that the plaintiffs have received substantial portion of someone tenant Tambe. Even this assertion is bereft of any particulars. In paragraph 9, it is asserted that the documents were not available with the applicant during the proceedings of the Courts below and they are now available with them. This can hardly be accepted as a sufficient cause for non production of documents in the Courts below.

3. In the case of ***Union of India. Vs. Ibrahim Uddin, (2012) 8 SCC 148***, the Apex Court has exhaustively dealt with provisions of Order 41, Rule 27 of C.P.C. in paragraphs 36 to 49. In paragraph 36, the Apex Court observed that the general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. Order 41, Rule 27 of C.P.C. enables the appellate Court

to take additional evidence in exceptional circumstances. The appellate Court may permit additional evidence only and only if the conditions laid down in the Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. In paragraph 39, it was observed that when a party had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot be allowed to produce it in appeal. The inadvertence of the party of realizing the importance of document does not constitute a substantial cause. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

4. Applying the tests laid down in this decision, I do not find any case is made out for granting permission to lead additional evidence. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)