

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

CIVIL APPLICAITON NO. 381 OF 2014
IN
CIVIL REVISION APPLICATION No.782 OF 2014

Mrs. Sarojini Shetti & Ors.

..Applicants

Vs

Sudha wd/o Mohan S. Vernekar
& Anr.

.. Respondents

Mr. K.J.Presswala, Senior Advocate a/w Mr. Sandeep Goyal i/b
Mulla & Mulla & C.B.C., Advocates for Applicants.

Mr. G.S.Godbole, Senior Advocate i/b Rahul Mestry, Advocate for
Respondents.

CORAM :

R.G.KETKAR,J.

DATE:

19/07/2016.

PC:

1. Heard Mr. K. J. Presswala, learned senior counsel for the applicants and Mr. G.S.Godbole, learned senior counsel for the respondents.

2. By this Application under Order 41, Rule 27 of C.P.C. seeking permission to bring documents on record, namely, documents at Exhibit-1 and Exhibit-2 Collectively to the application as additional evidence and for reading all these documents at the time of hearing of Civil Revision Application.

3. The applicants have contended in paragraph 5 that during the pendency of Appeal No. 655 of 2005, they came to know

about surrender of flat no.9 on first floor of building Ashok Deep' by the erstwhile tenant in favour of opponent-landlord. The erstwhile tenant's son gave certified true copy of affidavit-cum declaration of surrender dated 8.5.1998, while copy of which was notarized given to the applicants was dated 12.12.2013. It is further contended that the applicants had shown these documents to their Advocate who was of the opinion that the said fact was already pointed out before the trial Court and there was no necessity of filing such documentary evidence. In paragraph 6, the applicants have referred to letter dated 8.6.1993 in respect of flat no.13 and contended that the applicants could not produce the same earlier. These documents go to root of the matter.

4. In paragraph 7, the applicants contended that they have come across copies of electricity bills in respect of flats no.9 on first floor and 14 on the second floor which go to show that even as on date the said flats are in possession of distinct third persons. This shows that opponent-landlord has inducted third persons in the premises. It will adversely affect the bonafide need set up by opponents.

5. Opponents have filed reply of Tanmay N. Vernekar. It is contended that document at Exh.1 is dated 8.5.1998 and document at Exh.2 is dated 8.6.1993 and that suit was decreed on 5.8.2005. It is further contended that the said facts were also

pointed out by applicants before the trial Court as also the Appellate Court. It is further contended that before the Appellate Court, the applicants had filed application Exh.11 on 20.3.2013. This was opposed by filing reply dated 7.8.2013 at Exh.12 denying the contentions therein. The applicants filed rejoinder dated 20.8.2013 at Exh.13. Opponents filed sur-rejoinder at Exh.14. The said application was rejected on 5.5.2014. The allegation pertaining to electricity bills in respect of flat no.9 on first floor and flat no.14 on the second floor is also denied.

6. By order dated 4.4.2016 passed in this application, the submission made on behalf of the applicants that they are pressing Civil Application only in respect of Exhibit 3 Collectively, i.e. Electricity Bills, was recorded. Perusal of the electricity bills at Exh.3 Collectively shows that one bill pertains to flat no.9 situate on the first floor for September, 2013. Other bill is in respect of flat no.14 on the second floor for September, 2013. In paragraph 7 of the application, the applicants have asserted that flat no.9 on the first floor and flat no.14 on the second floor are occupied by third persons. It is further contended that these bills were not in possession of the applicants when the proceedings were conducted before the Courts below. As noted earlier, the said allegations are denied by the opponents. That apart, the explanation cannot be accepted in as much as the Appellate

Court decided the Appeal on 5.5.2014.

7. 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.

8. Applying the tests laid down in the above judgment and after considering the reasons in the Application, I do not find that any case is made out for production of additional evidence. Civil Application fails and the same is dismissed.

(R.G.KETKAR, J.)