

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

**WRIT PETITION NO.12895 OF 2016**

|                                               |                     |
|-----------------------------------------------|---------------------|
| <b>Param Pujya Sadhviji Uday Prabhashriji</b> | <b>..Petitioner</b> |
| <b>Versus</b>                                 |                     |
| <b>Shri. Ravindra Popatlal Shah</b>           | <b>..Respondent</b> |

**Mr. S. S. Koregave for the Petitioner.**

**CORAM : R. M. SAVANT, J.  
DATE : 23<sup>rd</sup> NOVEMBER, 2016**

**PC.**

1           The writ jurisdiction of this Court is invoked against the order dated 18.07.2016 passed by the Learned Joint Charity Commissioner, Kolhapur Region, Kolhapur, by which order, the application Exh.11 filed by the Petitioner came to be rejected. The said application was filed under Order 41 Rule 27 of the Civil Procedure Code ("CPC" for short). The Petitioner is the proponent of a change report which has been rejected by the Deputy Charity Commissioner by order dated 29.08.2015. Against the said order, the Petitioner has filed Appeal No.4 of 2016 before the Learned Joint Charity Commissioner and in the said Appeal the Petitioner filed the instant application for being permitted to produce the documents which were inter-alia the notice of annual general meeting, receipt of the notice, membership list, proceeding,

attendance book, accounts books and audit reports etc. In so far as the said documents are concerned, whilst the matter was before the Deputy Charity Commissioner, the Petitioner had directed witness summons to be issued to one Rajgonda Annaso Patil who the Petitioner contended was in possession of the said documents. On receipt of the witness summons, the said Rajgonda Annaso Patil informed the Court that he is not in possession of any such documents. Hence the documents were not produced before the first Authority i.e. the Deputy Charity Commissioner. As indicated above, the change report filed by the Petitioner was rejected by the Deputy Charity Commissioner by order dated 29.08.2015. In the instant Appeal, the Petitioner filed the application invoking Order 41 Rule 27 of the CPC on the ground that the said documents could not be produced before the first Authority in view of the threats that the said Rajgonda Annaso Patil had received. The affidavit of the said Rajgonda Annaso Patil was filed in support of the said application. The Learned Joint Charity Commissioner has rejected the said application on the ground that there is no evidence on record to prove that the said Rajgonda Annaso Patil was prevented from appearing before the Deputy Charity Commissioner and produce the said evidence. The Learned Joint Charity Commissioner has also observed that the said witness has not been able to establish as to how he was in custody of the said documents

and that the instant application has been filed at the stage when the proceedings were kept for orders. As indicated above, the Learned Joint Charity Commissioner has by the impugned order dated 18.07.2016 rejected the said application Exh.11 under Order 41 Rule 27 of the CPC.

2           The Learned Counsel for the Petitioner would contend that the said documents could not be produced in the circumstances mentioned in the said application and therefore the Learned Joint Charity Commissioner had erred in not exercising jurisdiction under Order 41 Rule 27 of the CPC.

3           In my view, it is not possible to accept the contentions urged on behalf of the Petitioner. It is trite that only if the prerequisites mentioned in Order 41 Rule 27 of the CPC are satisfied that the additional evidence can be led at the appellate stage. In the instant case, as indicated above, before the first Authority the said Rajgonda Annaso Patil had stated that he was not in possession of the said documents. However at the appellate stage he seems to have changed his stand and has now stated that he was prevented from producing the said material however no evidence has been placed on record. In view thereof, the prerequisites of Order 41 Rule 27 of the CPC cannot be said to have been satisfied in the instant case. In that view of the matter, the impugned

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order does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its writ jurisdiction. The Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**