

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 650 OF 2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. Uday Warunjikar for the Petitioner.

Mr. D.S. Joshi for the Respondent.

CORAM : K. K. TATED, J.

DATED : 19/07/2016

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner plaintiff challenges the order dated 28.09.2015 passed by learned District Judge-2, Islamabad below Exh.17 in Regular Civil Appeal No. 27 of 2013 allowing respondent's/defendant's application under Order 41 R 27 of Code of Civil Procedure, 1908 permitting them to place on record the additional documents.

3 The learned counsel for the plaintiff submits that documents which defendant wanted to rely were five pages of insurance policy. He submits that those documents were produced before the Trial Court being Exh. 18. But those documents were not admitted in evidence as same were not proved. He submits that at the time of deciding the application filed by defendant, the Appellate Court failed to consider the provision of Order 41 Rule 27 of Code of Civil Procedure, 1908. He submits that Trial Court has given reason in paragraph 9 of the

impugned order that those documents were not denied by the Plaintiff and same were produced by the Plaintiff. Same is not correct. He submits that court has not given any reason for rejecting their application. He submits that in view of this fact, matter may be remanded to the Appellate Court for deciding the respondent's application below Exh.17 on its own merits.

4 On the other hand, the learned counsel for the respondent Insurance Company also submits that they have no objection if the matter will be remanded to decide the Exh.17 on its own merits with liberty to file additional affidavit, if any.

5 Considering this fact, by consent of both the parties, following order is passed:

a) Order dated 28.09.2015 passed by learned District Judge-2 below Exh.17 in Regular Civil Appeal No. 27 of 2013 is set aside.

b) Matter is remanded to the Appellate Court for deciding Exh.17 on its own merits.

c) Liberty granted to both the parties to file their additional affidavit, if any, within six weeks from today and serve copy on other side.

d) Appellate Court to decide Exh.17 as early as possible, but in any case within 12 weeks from today.

e) Writ Petition stands disposed of accordingly.

(K.K.TATED, J.)