

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5304 of 2016
(Dinkar s/o Rajaram Sarap v. Central Bank of India, through Zonal
Manager, Nagpur and another)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri O.Y. Kashid, Advocate for Petitioner.

Coram : R.K. Deshpande, J.
Date : 10th October, 2016

The lower Appellate Court has rejected the application under Order XLI, Rule 27(a) and (aa) of the Code of Civil Procedure. The relevant portion of reasoning contained in para 6 of the order dated 16-6-2016 passed by the lower Appellate Court in Regular Civil Appeal No.97 of 2013, is reproduced below :

“6. The case of plaintiff does not come under the per view of clause (a) and (aa) of Rule 27; as, such evidence was well within the knowledge of plaintiff, and after exercising due diligence he could have produced such evidence by examining the Doctor. It is also not the case that the plaintiff wanted to examine the Doctor, but the Trial Court refused for it. Now the only remedy which the plaintiff may seek is clause (b) of Rule 27 which provides that if the appellate Court requires any document to be produced,

or any witness to be examined, to enable it to pronounce judgment, such additional evidence may be permitted to be adduced.”

If the question of rejection of the application under Order XLI, Rule 27(a) and (aa) of the Code of Civil Procedure gives rise to any substantial question of law, it shall be open for the petitioner to raise such ground in second appeal, if it is so required. On the other aspect of invocation of power of the Appellate Court under clause (b) of Rule 27 of Order XLI of the Code, the lower Appellate Court has kept the question open to be decided at the time of final hearing of the appeal.

No interference is called for. The petition is dismissed.

Judge.

Lanjewar

CERTIFICATE

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