

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1450 OF 2014

MOHD. ABDUL SHOEAB AJIJ KHUSRO AND ANOTHER
VERSUS
RIZWANABEGUM SYED PASHA

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Advocate for Petitioners : Shri Kasliwal Ajit D.
Advocate for Respondent : Smt. Kazi Sabahat T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 19, 2017

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PER COURT :-

1. Since Mrs. Kazi, has appeared on behalf of the sole respondent, the appearance of Shri Joshi, learned advocate is discharged.
2. The petitioners are the original defendants, who are aggrieved by the order dated 20.9.2013, passed by the Appeal Court on Exhibit 13, by which, the documents and records pertaining to Aurangabad Times Colony Housing Society, Katkat Gate, Aurangabad have been called for only for reference purpose.
3. I have considered the submissions of the learned Advocate for the petitioners and the learned Advocate for the respondent who has strenuously prayed for the dismissal of this petition with costs.

4. There is no dispute that the trial Court has dismissed RCS No.261 of 2004, by judgment dated 21.6.2010, filed by the respondent herein. Aurangabad Times Colony Housing Society, Katkat Gate, Aurangabad was not a party in its capacity as a Society in the suit. It is also not a party to the pending RCA No.13 of 2011. By the impugned order, a vague direction has been issued by the trial Court under Order XLI Rule 27 of the CPC, stating, “*R & P as prayed from the Housing Society keep for compliance.*” A direction in paragraph No.2 of the impugned order is that the “*R & P be called for reference purposes.*”

5. The Honourable Apex Court has settled the law in the case of Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148], that if any party to an appeal desires to lead additional evidence, such an application can be considered only at the time of deciding the Appeal.

6. It is equally settled in the matter of 20th Century Fox Corporation (India) (P) Ltd. Vs. F.H. Lala [(1974) II LLJ 156 Bom.], that documents which are germane to the cause of action and without which the case cannot be adjudicated upon, are to be produced. Similarly, exclusive custody of the documents is also to be considered while directing production of such documents.

7. I find from the impugned order that an entity, which is not a

party to the proceedings, has been directed to produce the record. Even the application does not state as to why the said documents are required and why those were not called for when the trial Court decided the suit. Apparently, the impugned order is not in tune with Order XLI Rule 7 of the C.P.C. No directions could have been issued to an entity which is neither before the Court, nor is heard and more so when the request for production of documents is vague and ambiguous.

8. Considering the above, this petition is allowed. The impugned order dated 20.9.2013 is quashed and set aside. The application dated 20.6.2012, stands rejected.

9. Considering that the appeal is filed in the year 2011, I find it appropriate to direct the Appeal Court to decide the pending Appeal as expeditiously as possible and preferably on/or before 28.2.2018.

(RAVINDRA V. GHUGE, J.)

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