

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

WRIT PETITION NO. 2373 OF 2014

Nilkanth Baburao Mahajan
Age 70 years, occup. Agril.
R/o Near Budhwar Darwaja,
Erandol, Tq. Erandol,
Dist. Jalgaon

.. Petitioner

versus

Sau. Mathurabai Sitaram Mali,
Age 76 years, occup. Agril.,
R/o Near New Bus Stand, Erandol,
Erandol, Tq. Erandol, Dist. Jalgaon

.. Respondent

Mr. Vijay B. Patil, Advocate for petitioner

Mr. P. S. Shendurnikar, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.

DATE : 29-11-2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. After hearing the counsel, it transpires that the situation is circumscribed by decision of the supreme court rendered way back in 2008 in the case of Eastern Equipment & Sales Ltd. vs. ING. Yash Kumar Khanna,

reported in 2008 (()) BCI 354 as well as another decision of the supreme court in the case of *Malayalam Plantations Ltd. vs. State of Kerala and another*, reported in 2010 DGLS (Soft.) 905 = 2011 AIR SCW 264.

3. Perusal of head-note in the decision in the case of *Eastern Equipments* (supra) vividly makes clear legal position obligating decision on application for reception of additional evidence has to be rendered along with appeal. It does not appear to be case that there has been any alteration in the position referred to and coming forth under the first decision.

4. As such, without getting into the merits of impugned order dated 27-08-2013 and the arguments of learned counsel, it would be expedient that said order be set aside in view of decision of the supreme court in the case of *Eastern Equipments* (supra), restoring applications Exhibits 18 and 20 for decision afresh.

5. Impugned order dated 27-08-2013 commonly passed on Exhibits – 18 and 20 in regular civil appeal no. 43 of 2008 by District Judge – 4, Jalgaon is set aside. Exhibits

18 and 20 are restored to their position as subsisting immediately before impugned order was passed, to be decided afresh along with appeal having regard to decision of supreme court in the case of *Eastern Equipments & Sales Ltd. vs. ING. Yash Kumar Khanna*, reported in 208 (0) BCI 354. It is made clear, all points of parties are kept open to be agitated in respect of applications Exhibits-18 and 20.

6. At this stage, learned counsel Mr. P. S. Shendurnikar appearing on behalf of the respondent states that the appeal is of the year 2008 and as such the same be directed to be disposed of expeditiously.

7. The request appears to be fair and reasonable. The appellate court to decide the appeal along with applications Exhibits 18 and 20 expeditiously preferably within a period of six months from the date of receipt of writ of this order.

8. Writ petition is disposed of. Rule made accordingly absolute.

SUNIL P. DESHMUKH,
JUDGE

pnd