

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3107 OF 2016

Syed Jeelani S/o Syed Ibrahim

Petitioner

Versus

Shabana Begum w/o Haji Syed Ibrahim & others

Respondents

Mr. G.R. Syed advocate for the petitioner

Mr. M.G. Deokate advocate for Respondents

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 25th July, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 17.2.2016, by which Application Exhibit 23 filed by the petitioner-respondent in RCA No.21/2015 has been rejected.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides.

3 RCA No.21/2015 was at the stage of final arguments before the learned Principal District Judge, Nanded. Vide a purshis given by both the sides at Exh.U-16, the mater was fixed for final arguments in the appeal. For two dates, the matter was

adjourned.

4 On 16.2.2016, when the appellant completed his final arguments, the petitioners commenced their arguments and aborted further submissions by contending that, they desire to file certain documents under order 41 Rule 29 of the Civil Procedure Code. It was then canvassed that there are allegations against an Advocate and he be called to the Court to make a statement. This was submitted without completing the final arguments and without there being an application on record. Finally, Exhibit 23 was tendered on 5.20 p.m. and was pressed. By the impugned order dated 17.2.2016, the learned appeal Court has rejected the application.

5 It is trite, keeping in view the Judgment delivered by the Honourable apex Court in the matter of **Malayalam Plantations Ltd vs State Of Kerala & Anr (2010 (13) SCC 487)** and **Union Of India vs Ibrahim Uddin & Anr (2012 (8) SCC 148)** that an application praying for leave to lead additional evidence under Order 41, Rule 27 of CPC has to be considered along with main appeal and cannot be considered as a stand alone application.

6 It appears from Exhibit 23 that, allegations have been

made against an Advocate and hence, it was prayed that the matter be remitted to the Trial court for recording the evidence of the Advocate, with regard to the allegations against him, which had led to an exparte Judgment and decree. It appears from the record that, on account of the insistence of the petitioners, that the learned Appeal Court has dealt with Exhibit 23 forthwith.

7 However, the conduct of the petitioners is set out in paragraph Nos.1 to 4 of the impugned order, whereby an attempt was made to stall the progress in the appeal and a lawyer was requested to be summoned for making a statement in the midst of the final arguments. It, therefore, appears that on account of the conduct of the petitioners, the final hearing in the matter got disrupted and it was on their insistence that the appeal Court took up Exhibit 23 for hearing and orders.

8 It is only in view of the law laid down by the Honourable Supreme Court in the matters of **Malayalam Plantations and Union Of India vs Ibrahim Uddin** (supra) that, I am setting aside the impugned order and restoring Application exhibit 23 to be considered on its own merits by the appeal court, while deciding the Appeal. However, considering the conduct of the petitioner, I am imposing costs of Rs.5,000/- to be paid by the petitioners. Learned counsel for the respondent graciously

submits that the said amount be deposited with the District Legal Aid Services, Authorities, Nanded. In the light of the above, the petitioner shall deposit the said amount with the office of District Court, Nanded within two weeks to be transferred to the Legal Aid Services Authority, District Court, Nanded.

9 Needless to state, this Court has not dealt with the merits of the pleadings in Exhibit 23 and its effect and as such, the Appeal Court may consider the said application on its own merits. The litigating sides shall refrain from seeking unreasonable adjournments and forth with canvass their final submissions.

(RAVINDRA V. GHUGE , J)

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