

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9767 OF 2017
(Vijaykumar Vithalrao Jagtap Vs. Pratibhabai Sopanrao Channwar
and another)

Mr.G.N.Patil, Advocate for the petitioner.
Mr.S.G.Rudrawar, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 01/02/2017 by which application Exh.31 invoking Order 41 Rule 27 of the CPC, has been rejected on the ground that no party is permitted to lead evidence either oral or documentary in an appeal and this would be done only as per the discretion of the Appellate Court.

2. Mr.Rudrawar, learned Advocate for respondent No.1 has strenuously prayed for the dismissal of the petition and for imposing costs.

3. The issue with regard to an application for leading evidence and for production of documents as a part of documentary evidence, has to be considered by the Appellate Court in Appeal Proceedings

while deciding the main appeal itself. The law on this count has been well settled by the Hon'ble Apex Court in the matter of Malyalam Plantations Ltd., Vs. State of Kerala and another [AIR 2011 SC 559] and Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148] = [2013 AIR SCW 2572].

4. I find that the learned Advocates before the Appellate Court have not rendered proper assistance to the Appellate Court. Had the law laid down by the Hon'ble Apex Court in Malyalam Plantations Ltd., and Ibrahim Uddin (supra) been cited, it could not have passed the impugned order.

5. Considering the above, this petition is allowed only in view of the crystallized position of Law. The impugned order dated 01/02/2017 is quashed and set aside and application Exh.31 is restored to the file of the Appellate Court to be considered and decided alongwith RCA No.47/2012.

(Ravindra V.Ghuge, J.)