

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

66 WRIT PETITION NO. 8008 OF 2013

DNYANESHWAR MITHARAM TAYADE
VERSUS
JAWATRABAI SHRAWAN ATKALE AND OTHERS

...

Advocate for Petitioner : Mr. Wani Girish V.
Advocate for Respondents : Mr. Patil Vinod Prakash

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CORAM : S.V. GANGAPURWALA, J.
DATE : 29.08.2017

P.C. :

. The application filed under Order 41 Rule 27 of the Code of Civil Procedure is rejected. I have heard Mr. Wani, the learned counsel for the petitioner and Mr. Patil, the learned counsel for the respondent.

2. The Apex Court has consistently held that the application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure has to be decided along with the appeal and not dehors the appeal. The reference can be made to the judgment of the Apex Court in a case of **Malyalam Plantation Ltd. V/s. State of Kerala & Anr. reported in 2011 AIR SCW – 264** and in a case of **Union of India V/s. Ibrahim reported in 2013 AIR SCW- 2752.**

3. In the light of the above, the impugned order is quashed and set aside. The Appellate Court shall decide the

application for additional evidence under Order 41 Rule 27 of the Civil Procedure Code along with the appeal on its own merits.

4. It is made clear that, I have not considered the merits of the application and parties can agitate about the same when the said application is decided along with the appeal. Writ petition accordingly stands disposed of. No costs.

(S.V. GANGAPURWALA)
JUDGE

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