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

**WRIT PETITION NO.7717 OF 2016**

Khemchand Tribhuvan Doshi,  
Died by L.Rs.

1. Kirit Khemchand Tribhuvan Doshi,  
Age: 50 years, Occ: Business,
2. M/s. Bhagwandas Sons  
A partnership Firm  
Shri Satish Bhagwandas Jagwani  
Age: 38 years, Occ: Business,

Both R/o. 92, Polan Peth,  
Jalgaon City, Dist. Jalgaon.      ..PETITIONERS

VERSUS

Shri Mayurchandra Ramdas Bhatiya,  
Age: 35 years, Occ: Agri.,  
R/o. Gujrathi Galli, Dharangaon,  
Tal. Dharangaon, Dist.Jalgaon.

**FORMAL PARTIES:**

- F1. Yogendra Tansukhbhai Doshi,  
Age: 40 years, Occ: Businss,
- F2. Kamlesh Tansukhbhai Doshi,  
Died, Abatd
- F3 Nilesh Tansukhbhai Doshi,  
Age: 34 years, Occ: Business,
- F4 Devang Tansukhbhai Doshi,  
Age: 35 years, Occ: Business,

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Resp. Nos.f1 to F4 are all  
R/o. 92, Polan Peth,  
Jalgaon City, Dist. Jalgaon.      ..RESPONDENTS

Mr R.R. Mantri, Advocate h/f Mr R.R. Sancheti,  
Advocate for petitioners;  
Mr G.V. Wani, Advocate for respondent

**CORAM : NITIN W. SAMBRE, J.**

**DATE : 8th NOVEMBER, 2017**

**ORAL ORDER :**

The order impugned dated 10<sup>th</sup> March, 2016 passed by the Principal District Judge, Jalgaon in Regular Civil Appeal No.156 of 2007 passed below Exhibit-35 and Exhibit-1 which is questioned by the petitioner, defendant-respondent to appeal.

2. While inviting attention of this Court to the provisions of Order XIV Rule 27 of the Code of Civil Procedure, Mr. Mantri, learned Counsel for the petitioner would urge that the order is not sustainable as the provisions cannot be invoked to the benefit of the plaintiff, who was not diligent while conducting the trial of the suit. He submits that there has to be cogent and convincing reasons

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brought before the learned appellate Court so as to prompt him to exercise discretion under Order XIV Rule 27 of the Code of Civil Procedure, particularly requirement as contemplated thereunder. Apart from above, he submits that the appellate Court has committed error by framing two issues based on production of document, which prayer was never moved by the plaintiff-appellant and further directed the trial Court to record the additional evidence to be led by the parties on the said issues and return the evidence recorded together with its findings and reasons thereon.

3. Per contra, Mr Wani, learned Counsel for the original appellant-respondent herein supports the order impugned. According to him, the order is in tune with the provisions of Order XIV Rules 25, 26, 27 and 28 of the Code of Civil Procedure. He submits that once the Court has reached to a satisfaction that the findings are required to be invited from the trial court based on document as is permitted to be produced, fault cannot be

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noticed when such recourse is permissible under the law.

4. Considered rival submissions.

5. The dispute between the parties is in regard to the landlord and tenant. The respondent has lost his suit and as such, preferred appeal, in which he moved application under Order XIV rule 27 of the Code of Civil Procedure with a prayer that he be permitted to produce document and same be accepted and read during the hearing of the appeal.

6. While dealing with such prayer, the appellate Court, having regard to the nature of the dispute, brought before it, particularly through plaint in exercise of powers under provisions of Order XIV Rule 27(1)(b) of the Code of Civil Procedure felt it necessary that the said document is required to be permitted to produce on record and findings are restricted to call for on two issues framed in para 27 of the order. Once power

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flows from provisions under Order XIV Rule 27 (1) (b) of the Code of Civil Procedure requiring the appellate Court to permit to produce the said document and then call for evidence on the said document, no fault could be noticed in the impugned order as the same is passed in exercise of power vested to the appellate Court.

7.           Apart from above and after the document is permitted to produce the same is subject to scrutiny under evidence and as the present petitioner-defendant will be permitted to cross-examine the witness and if required, may also lead his evidence and he will get an opportunity to canvass his case qua documents and issues.

8.           In view thereof, no case for interference in exercise of writ jurisdiction is noticed. As such, writ petition fails and stands rejected.

( **NITIN W. SAMBRE, J.** )