

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9549 OF 2017

SAYYAD IQBAL SAYYAD ISMAIL USTAD
VERSUS
AUDUMBAR RANGANATH KOTALWAR DIED LRS

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Advocate for Petitioner : Shri Thorat Chandrakant R.
Advocate for Respondents : Shri Syed G.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 06, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 19.4.2017, by which, the appellate Court has rejected application Exhibit 50, which was filed under Order XLI Rule 27 of the CPC, seeking leave to adduce additional evidence.

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

3. Respondent No.1 in this matter has passed away. One of the L.Rs. Ashok Audumbar has also passed away. This petition abates against the deceased respondents. Shri Syed learned Advocate appears for rest of the respondents and submits that in so far the as an application under Order XLI Rue 27 of the CPC is

concerned, the law is settled in view of the judgments delivered by the Honourable Apex Court in the matter of Malayalaym Plantations Ltd. Vs. State of Kerala [(2010) 3 SCC 487], Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148], A. Andisamy Chettiar Vs. A. Subhuraj Chettiar [AIR 2016 SC 79]. Such an application has to be considered while hearing the appeal finally. Since the petitioner insisted on the hearing of the matter, he has invited an order of rejection. Now the petitioner cannot turn around and contend that the said application should have been considered at the final stage.

4. It is trite that an application under Order XLI Rule 27 of the CPC has to be considered by deciding the appeal finally in the light of the above referred law. The petitioner cannot dispute that Exhibit 50 was taken up for hearing at the insistence of the petitioner / appellant.

5. Considering the above, this petition is partly allowed. The impugned order dated 19.4.2017 is quashed and set aside and application Exhibit 50 is restored to the file of RCA No. 17 of 2012 to be considered by the appellate Court while deciding the appeal.

6. The petitioner shall, therefore, pay costs of Rs.1,000/- which shall be deposited with Advocate Association's Bar Library of Bombay High Court, Bench at Aurangabad, within a period of two weeks from today, as per the request of the learned Advocate for the respondent. Needless to state, the appellate Court will decide Exhibit 50, along with the appeal, on its own merits.

6. Since the appeal is pending for quite some time, the Court below would endeavour to decide the same expeditiously and preferably on/or before 28.2.2018.

(RAVINDRA V. GHUGE, J.)

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akl/d