

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

WRIT PETITION NO. 3511 OF 2017

Babsaheb Laxmanrao Dange and Others ..PETITIONERS

VERSUS

Dinkar Manikrao Shinde ..RESPONDENT

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Mr. P.N. Sonpethkar, Advocate for petitioners.

Mr. S.R. Deshpande, Advocate for respondent.

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CORAM : M.S. SANKLECHA, J.

DATED : 17th APRIL, 2017

ORDER :

1. Heard. At the request of learned Counsel for both sides, petition is taken up for final disposal at the stage of admission.

2. This petition under Article 227 of the Constitution of India challenges the order dated 09th June, 2016 passed by the District Judge, Aurangabad in Regular Civil Appeal No. 238 of 2010. The impugned order dated 09th June, 2016 has allowed the application of the respondent to produce additional evidence in terms of Order 41 Rule 27 of the Code of Civil Procedure (CPC) only on the ground that the additional evidence sought to be produced is relevant to the controversy.

3. The grievance of the petitioners to the impugned order is two fold – one that no specific hearing with regard to application for production of additional evidence was given to the petitioners and second that the impugned order allowing the application is not on the satisfaction of the provisions of Order 41 Rule 27 of the CPC.

4. So far the first grievance is concerned viz. that the impugned order was passed without giving an opportunity of hearing to the petitioners in respect of the application is evident from the fact that the impugned order itself records that it is being passed on reading the application and say. Further Mr. Sonpethkar, learned Counsel for petitioners states that he is appearing in the Trial Court and as a matter of fact no opportunity of hearing was given to the petitioners to oppose the application to lead additional evidence filed by the respondent.

5. So far as second grievance is concerned, the impugned order does not set out any reasons which would indicate satisfaction of the learned Civil Judge on the touchstone of the requirements to be satisfied before permitting additional evidence to be produced in appeal under Order 41 Rule 27 of the CPC viz. Trial Court refused to take the evidence on record or

that the same could not be produced during trial inspite of the due diligence on the part of the applicant.

6. In the above view, this is an appropriate case to exercise my supervisory jurisdiction under Article 227 of the Constitution of India, on account of both the grounds urged by the petitioners. Therefore the impugned order dated 09th June, 2016 is set aside. The application is restored to the Appellate Court to reconsider the application dated 21st December, 2011 made by the respondent herein for production of additional evidence and pass fresh orders therein.

7. At this stage, Mr. Deshpande, learned Counsel for respondent states that the application for production of additional evidence by the respondent contains xerox copies of evidence being sought to be produced. Thereafter on 09th April, 2014, the respondent has filed originals of the xerox copies for consideration as additional evidence. This application dated 09th April, 2014 would also be considered by the Appellate Court alongwith application for additional evidence dated 02nd December, 2011.

8. The Appellate Court is directed to dispose of the application as expeditiously as possible as the appeal is of the year 2010. Mr. Sonpethkar,

learned Counsel for the petitioners states that he will give utmost cooperation for early disposal of the appeal.

9. Petition is disposed of in above terms. No order as to costs.

(M.S. SANKLECHA, J.)

SSD