

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1378 OF 2017

Sou. Minakashi @ Meera Sagar
Shah

..Petitioner.

Vs

Pune Cantonment Executive
Officer and Ors.

.. Respondents

Ms.Indrayani M, Koparkar, Advocate for Petitioner.
Ms.Bhagyashree Bhosale i/b Nitin Deshpande, Advocate for
Respondents no. 3 to 6.

**CORAM : R.G.KETKAR,J.
DATE : 01/02/2017**

PC:

1. Not on Board. At the request of Ms. Koparkar, taken up for admission. Heard Ms. Indrayani Koparkar, learned counsel for the petitioner and Ms.Bhagyashree Bhosale, learned counsel for respondents no. 3 to 6 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 25.10.2016 passed by the learned District Judge-15, Pune below Exhibit 24 in Civil Appeal No.438 of 2013. By that order, the learned District Judge dismissed the application made by the plaintiff under Order 41, Rule 27 of C.P.C. for production of copy of the plan of the suit property signed by despondent no.3 - Ms Dolly H.Chaiwala and her Architects and submitted to respondent no.1 who is Pune

Cantonment Executive Officer.

3. Ms. Koparkar submitted that despite exercise of due diligence, the plan could not be produced during trial of R.C.S.No. 71 of 1998. In fact, between the petitioner and respondents no.3 to 6, Civil Suit bearing no. 444 of 2010 was pending before the Principal Judge of the Small Causes Court. In the proceedings, plan at Exh.67 was produced. The said plan was admitted by respondent no.3. As respondent no.3 has admitted that plan, it is necessary to permit the plaintiff to produce the said plan. By the impugned order, the learned District Judge has rejected the plan principally on the ground that the plan sought to be produced is not approved or sanctioned plan by Pune Cantonment Board as also on the ground that the said document was within the custody of the plaintiff before filing the same in Civil Suit No. 444 of 2010.

4. In the case of Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 841, the Apex Court has dealt with provisions of order 41, Rule 27 from paragraph 36 onwards. In paragraph 49, the Apex Court has held that an application under Order 41, Rule 27 of C.P.C is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. In the present case, suit is instituted challenging the notice issued by the Cantonment Board. It is not

the case of the plaintiff that she is producing the sanctioned or approved building plan. In fact, in paragraph 7, the learned District Judge has noted that the plan sought to be produced is not approved or sanctioned plan. This finding is not disputed by the petitioner. In view thereof, the said plan is absolutely irrelevant for deciding the controversy raised in the appeal. This plan cannot show whether the disputed structure is authorized or not. Hence, no fault can be found in the impugned order. Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)