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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1471 OF 2017**

Jayashri Babasaheb Lendave

... Petitioner

vs.

Santosh Puroshottam Dhawad & Anr.

... Respondents

Mr. Ashok B. Tajane for the Petitioner.

Mr. Anant Vadgaonkar for the Respondent no.1

Ms. M. R. Tidke, APP for the State.

CORAM : A. K. MENON, J.

DATE : 1st AUGUST, 2017

P.C.:

1. By this Writ Petition the petitioner seeks to challenge an order dated 4th March, 2017 rejecting an application Exhibit 33 seeking to file additional documents and permitting the petitioner to lead additional evidence. The two documents sought to be introduced are certified copies of judgment dated 4th May, 2006 in S.T.C. No. 1544 of 2001 and a letter addressed by MHADA which Mr. Tajane claims has a bearing on the matter of the dispute between the parties.

2. The certified copy of the said judgment which was sought to be introduced contained reference to the fact that pursuant to letter issued by MHADA it became clear that plot of land could not be developed as contemplated by the parties. This judgment and the letter of MHADA were the two documents which the petitioner sought to introduce at the appellate stage.

3. Heard parties. Considering the narrow scope of this petition, this Writ Petition can be disposed of at the stage of admission itself. Counsel for both sides consent to the final disposal of this Writ Petition.

4. Rule. Rule made returnable forthwith. By consent taken up for hearing and final disposal.

5. The impugned order inter alia records that the documents which were sought to be introduced by virtue of the application at Exhibit-33 were already filed along with the appeal in 2013. However the explanation given in the application is that due to inadvertence permission to file additional document was not taken prior to filing the same. When this fact became apparent an application was preferred but belatedly. It was noted despite the delay the applicant did not disclose the date of knowledge of the existence of these two documents in the application and unless the date of knowledge is disclosed this application could not be considered.

6. It is further recorded that the statement of the accused under Section 313 of the Code has been recorded on 5th May, 2012 and the judgment in question was pronounced only on 12th February, 2013. In the circumstances, for about nine months the appellant accused had an opportunity to produce the additional evidence. The impugned order records that the applicant had intentionally not given the date of knowledge and not explained the delay in filing the application.

7. Mr. Tajane, learned Counsel for the petitioner has taken me to the contents of the application, inter alia reasons as to why the evidence had not been filed. It is not in dispute that these documents were filed along with the appeal compilation.

8. The learned Counsel for the respondent opposed the petition on the ground that Exhibit-33 is filed only by way of an after thought and in order to fill up lacunae in the evidence. He relied upon decision of this Court in the case of *Mamata Devi w/o. Prafulla Kumar Bhansli vs. Vijay Kumar Mamraj Agrawal [2008 O ALLMR (Cri) 442]* and *Mr.Subhash Chunilal Gandecha vs. Mehandibhai s/o. Musabhai Lakhani & Another [2011 O ALLMR (Cri) 2535]* in support of the submission that an application under section 391 is intended to serve the cause of justice but not at the cost of protracting the litigation and further should not be allowed to fill up the lacunae in the applicant's case.

9. On the other hand, Mr. Tajane, learned Advocate for the petitioner has relied upon the two decisions in *Shri Victor Albuquerque vs. Saraswat Co-operative Bank Ltd and Ors. [1998 O AIR (Bom) 346]* and *Mr.Subhash Chunilal Gandecha vs. Mehandibhai s/o. Musabhai Lakhani & Another [2011 O ALLMR (Cri) 2535]* and inter alia the observation of this Court while deciding an application under section 391 the appellate Court must consider whether the additional evidence was necessary for arriving at a decision of the case.

10. Having considered the rival submissions and perused the impugned order, I am of the view that the following order will meet the ends of justice :

(i) The impugned order dated 4th May, 2017 rejecting the application for leading additional evidence at Exhibit-33 is hereby set aside on condition that the appellant pay costs of Rs.25,000/- to the Respondents as condition precedent within a period of two weeks from the date of uploading of this Order.

(ii) If costs are paid, the additional documents shall be considered by the Appellate Court. If costs are not so paid on or before 16th August, 2017 this order shall stand vacated and the Writ Petition shall stand dismissed without further reference to the Court.

(iii) Rule made absolute in the above terms.

(iv) All Parties to act on an authenticated copy of this order.

(A. K. MENON, J.)