

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11967 OF 2016

Danesh Irani ... Petitioner
Vs.
Union of India and another ... Respondents

Mr. T. D. Deshmukh for Petitioner.
Mr. S. R. Rajguru i/b. Ms J. N. Pandhi for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MARCH 07, 2017

P.C. :

Heard Mr. Deshmukh, learned Counsel for petitioner and Mr. Rajguru, learned Counsel for respondents at length. Rule. Mr. Rajguru waives service for respondents. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 15.07.2016 below exhibit-17 as also order dated 30.07.2016 below exhibit-19 passed by the learned District Judge, Pune in Miscellaneous Civil Appeal No.209 of 2016. By these orders, the learned District Judge rejected the applications made by the petitioner under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

3. Petitioner filed application exhibit-17 on 15.07.2016 for producing additional evidence. On 15.07.2016, the learned District Judge rejected the application by passing the following order:

“

Q

Perused. No say is filed.
Being devoid of merits, rejected.

sd/-
15/7/16”

4. Petitioner thereafter filed application for inspection of property under Order XVIII, Rule 18 of C.P.C. By order dated 30.07.2016, the learned District Judge rejected the application by passing the following order:

“ Q
 Rejected.

 sd/-
 30/7/16 ”

5. Mr. Deshmukh relied upon the decision of the Apex Court in the case of ***Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148***, and in particular, paragraph 44 thereof to contend that while rejecting the applications, the learned District Judge did not record any reasons.

6. On the other hand, Mr. Rajguru supported the impugned orders. As far as the order rejecting the application under Order XLI, Rule 27 is concerned, he relied upon Order XLI, Rule 27 (2) which lays down that where the additional evidence is allowed to be produced by an appellate Court, the Court shall record reasons for its admission. He submitted that it is only in the event of the appellate Court allowing the application for leading additional evidence, the Court is required to record reasons. In other words, while rejecting the application for additional evidence, the appellate Court is not required to record reasons. In support of this proposition, he relied upon the Full Bench decision of Calcutta High Court in ***Bibhabati Devi Vs. Ramendra Narayan, AIR (29) 1942 Calcutta 498***.

7. I have already extracted the orders impugned in this Petition. In ***Union of India (supra)***, in paragraph 44, the Apex Court has observed

thus,

“44. It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice – delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. (Vide: State of Orissa v. Dhaniram Luhar, AIR 2004 SC 1794; State of Uttaranchal & Anr. v. Sunil Kumar Singh Negi, AIR 2008 SC 2026; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors., AIR 2010 SC 1285; and Sant Lal Gupta & Ors. v. Modern Cooperative Group Housing Society Limited & Ors., (2010) 13 SCC 336).”

8. Mr. Deshmukh states that petitioner is not challenging order dated 30.07.2016 below exhibit-19 and the challenge is restricted only to the order dated 15.07.2016 below exhibit-17.

9. In view thereof, the impugned order dated 15.07.2016 is set aside. Application exhibit-17 is restored to the file of the learned District Judge. The learned District Judge is expected to dispose of the application by recording reasons. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)