

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4902 OF 2017

(SUDHIR BHIVRAJI RATHI...VS..GANPATRAO RAMCHANDRA PATMASE, AMRAVATI)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S.Alaspurkar, Advocate for Petitioner.

CORAM : S.C.GUPTE, J.
DATED : AUGUST 09, 2017.

Heard learned counsel for the petitioner.

This petition challenges an order passed by District Court, Amravati in an appeal from an interlocutory order passed by the trial Court. By the impugned order, the District Court allowed production of three documents. The order is challenged on several grounds.

First ground urged by the petitioner is that the order is passed in breach of the provisions of Order 41 Rule 27 of the Code of Civil Procedure. It is submitted that there is no case made out for admission of evidence at the appellate stage. There is no merit in this objection, since the documents, which are allowed to be produced by the impugned order, are generated after the impugned order of the trial Court was passed. Second ground of challenge is that there are no reasons discussed in the order of the District Court passed on the application for production, allowing production of documents. Even this ground has no merits.

The, reasons are reflected in the impugned order of the District Court, namely, the documents submitted by the appellant are issued after the order of the trial Court and the same appear to be relevant for the decision of the case.

Third ground of challenge is that the order does not permit the petitioner (original plaintiff) to deal with the documents. Learned counsel relies on a judgment of the Supreme Court in the case of *Malyalam Plantations Ltd. Vs. State of Kerala and another*, reported in **AIR 2011 SC 559**. In this case, the Supreme Court observed that if any application is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits as to whether the documents have any relevance or bearing on the issues involved and decide the appeal one way or the other based on such conclusion.

The District Court, in the present case, has merely allowed production of documents. It, in fact, has made it very clear that it proposes to decide the matter on merits after considering the documents. That means, when the matter is heard on merits by the appellate Court, it will necessarily apply its mind to the relevance of the documents produced before it and whether the documents have any bearing on the issues involved in the appeal. The petitioner need not, in the premises, entertain any apprehension on this score. There is, thus, no merit even in this ground of challenge.

The writ petition is, accordingly, **dismissed**. No costs.

JUDGE