

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2592 OF 2018

THE AGRICULTURAL PRODUCE MARKET COMMITTEE,
GHANSAVANGI, THROUGH ITS CHAIRMAN
VERSUS
SUBHASH ABASAHEB PANDBHARE PATIL

Advocate for Petitioner : Mr. S.S. Tope.
Advocate for Respondent : Mr. P.R. Katneshwarkar
h/f. Mr. A.P. Avhad.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 19th March, 2018

PER COURT :

1. The petitioner/APMC is aggrieved by the order dated 21/02/2018, passed by the Appellate Court in R.C.A. No. 67/2017, by which, application Exhibit 43 filed by the APMC, seeking leave to place on record additional evidence under Order XLI Rule 27 of the Code of Civil Procedure has been rejected on its merits.

2. I have considered the strenuous submissions of the learned counsel for the petitioner/APMC and the learned counsel for the respondent/original plaintiff. Copy of the Writ Petition No. 7811/2014 and Civil Application No. 4629/2015, filed in the said Writ Petition have also been brought to my notice. The order of this Court dated 31/10/2017, passed in another Writ Petition

No. 12280/2017, is also cited.

3. The Hon'ble Apex Court has settled the law in matter of applications filed under Order XLI Rule 27 in the following cases :

A) Malayalam Plantations Ltd. Versus State of Kerala and another [AIR 2011 SC 559].

B) Union of India Versus Ibrahim Uddin and another [AIR 2013 SCW 2750].

C) A. Andisamy Chettiar Versus A. Subburaj Chettiar [AIR 2016 SC 79].

4. The Hon'ble Apex Court has concluded that when it comes to dealing with applications under Order XLI Rule 27 during the pendency of the Appeal before the Appellate Court, such applications are not to be entertained during the pendency of the Appeal and must be considered along with main Appeal when it is heard finally.

5. It is obvious from the record that the petitioner/APMC insisted before the Appellate Court that application Exhibit 43 should be decided before deciding the pending Appeal. Consequentially, the Appellate

Court considered Exhibit 43. Learned counsel for the petitioner did not assist the Appellate Court by citing the above stated three judgments of the Hon'ble Apex Court.

6. Considering the above situation and on account of the insistence of the APMC, that Exhibit 43 was adjudicated upon prematurely, I deem it appropriate to restore application Exhibit 43 only for the reason that the law laid down by the Hon'ble Supreme Court was not cited before the Appellate Court. Since, I passing this order, I am not going into the merits of the order passed by the Appellate Court dated 21/02/2018.

7. Considering the above, this petition is partly allowed. The impugned order dated 21/02/2018 is set aside only because the Appellate Court has decided the said application at a premature stage. Exhibit 43 shall be considered on its own merits along with the main Appeal. The judgments cited by the petitioner in Jaipur Development Authority Versus Kailashwati Devi [AIR 1997 SC 3243] and Jayaramdas and Sons Versus Mirza Rafatullah Baig and others [AIR 2004 SC 3685] and such other judgments as may be cited by the litigating sides,

would be considered by the Appellate Court while deciding RCA No. 67/2017, as well as application Exhibit 43. All contentions of the litigating sides are therefore, kept open for the Appellate Court to consider.

8. Since, the APMC has not rendered assistance to the Appellate Court and has unnecessarily pressed application Exhibit 43 at a premature stage, costs of Rs. 5,000/- shall be deposited by the petitioner APMC before the Appellate Court on/or before 06/04/2018. The Appellate Court shall transmit the said amount of Rs. 5,000/- to the Legal Aid Services Authority, District Jalgaon, as donation.

9. The litigating sides would complete their oral final submissions in the appeal and application Exhibit 43 on/or before 06/04/2018, and the Appellate Court, then would proceed to decide the said Appeal as expeditiously as possible and preferably on/or before 30/04/2018.

(RAVINDRA V. GHUGE, J.)