

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

915 WRIT PETITION NO. 5329 OF 2015

MADINABAI RASUL INAMDAR (DIED) THROUGH L.RS.
SHAUKAT RASUL INAMDAR AND OTHERS
VERSUS
LILABAI MADHUKAR SONAWANE AND ANOTHER

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Advocate for Petitioners : Mr. A. R. Syed, h/f Mr. Shailesh P. Brahme.
Advocate for Respondent No.1 : Mr. Paresh B. Patil.

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CORAM : **V. K. JADHAV, J.**
DATE : 08th February, 2018.

ORDER:

. The learned counsel for Petitioners, on instructions, seeks leave to withdraw this writ petition with liberty to file an application with all the details including the explanation for production of the documents before the Court belatedly.

2 It appears that application Exhibit 162 has been filed without giving the details as to the documents and the application also lacking the reasons as to why such application has been filed for production of documents belatedly. In the case of **Billa Jagan Mohan Reddy Vs. Billa Sanjeeva Reddy**, reported in, **1994 (4) SC 659**, the Supreme Court in paragraph 4 of the order has made the following observations:

“4. ORDER 13, Rule I provides thus :

“1. Documentary evidence to be produced at or before the settlement of issues. (1) The parties or their pleaders shall produce, at or before the settlement of issues, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in court, and all documents which the court has ordered to be produced. (2) The court shall receive the documents so produced : Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.” It is clear from its bare reading that the parties or their counsel shall be required to produce all the documentary evidence in their possession or power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The court is enjoined under subrule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for delay is not as rigorous as one filed under Section 5 of the Limitation Act. These documents were not in the possession or custody of the appellants, but they have obtained certified copies from the Revenue Authorities and sought to be produced. It is undoubted that there is a delay in production of the said documents. But the

trial court had stated that the application was filed at the stage of arguments, seeking to produce those documents and sought to rely upon the documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the court felt that interest of justice requires that the documents may be received, exercising the power under Order 4 1, Rule 27 Civil Procedure Code the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issues arising in the controversy. Under these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents. The High Court also committed the same error in not considering the effect in this behalf in the right perspective. The orders are accordingly set aside and the delay in filing the documents is condoned. The trial court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the reference according to law.”

3 In the light of the above and since the application Exhibit 162 is lacking the details, leave granted to withdraw this writ petition with liberty as aforesaid. The writ petition is accordingly, disposed of.

4 Needless to say that the application Exhibit 162 is hereby filed and the order passed thereon also set aside for that purpose. If such an application is filed, the Trial Court shall decide the said application afresh after giving an opportunity of being heard to both the parties having due regard to the ratio laid down by the Supreme Court in the case cited above and also under the provisions of Order XIII Rule 1 and Order VIII Rule 1-A (3) of the Code of Civil Procedure.

[V. K. JADHAV, J.]

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