

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9635 OF 2017

**VIJAY GANPATI HATKAR AND OTHERS
VERSUS
DATTA GOVIND THORAT AND OTHERS**

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Advocate for the Petitioners : Shri S. S. Gangakhedkar
Advocate for Respondent Nos. 1, 2, 3 and 4 : Shri A. A.
Mukhedkar

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th NOVEMBER, 2018.

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PER COURT :

1. The petitioners, who are appellants in RCA No. 20/2011, are aggrieved by the order dated 11/04/2017, by which, the Trial Court has rejected application Exhibit 11 filed by these petitioners invoking order under Order XLI Rule 27 of the Code of Civil Procedure.

2. I have considered the submissions of the learned Advocates for the respective sides.

3. The Honourable Apex Court, has crystalised the law in

1] Malyalam Plantations Ltd vs. State Of Kerala

and another, AIR 2011 SC 559.

2] Union Of India vs. Ibrahim Uddin & Anr.

(2012) 8 SCC 148

3] A. Andisamy Chettiar vs A. Subburaj

Chettiar, AIR 2016 SC 79.

that an application under Order XLI Rule 27 will have to be considered by the Appellate Court alongwith the main Appeal and such application shall not be considered independently before taking up the Appeal for final hearing.

4. In fact, it appears that the Appellate Court was not properly assisted by the litigating sides. Had these judgments been cited, the Appellate Court would have been better assisted while hearing Exhibit 11 and would have considered the said application alongwith the Appeal which is pending final hearing for the last about seven years.

5. In view of the above, the impugned order is quashed and set aside. Application Exhibit 11 is restored to the file in RCA No. 20/2011.

6. The Appellate Court would consider Exhibit 11 alongwith the main Appeal on its own merits and shall decide the Appeal as expeditiously as possible and in any case, on or before 30/03/2019.

7. Needless to state, all the contentions of the litigating sides are left open.

(RAVINDRA V. GHUGE, J.)

shp/-