

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

*WRIT PETITION No. 11479 OF 2018
WITH
CIVIL APPLICATION No. 14647 of 2018
IN
WRIT PETITION 11479 OF 2018*

Rahibai Pandharinath Kajabe and another ... Petitioner
Versus
Bhau Kashinath Kajabe and others ... Respondents

Mr. A.Z. Gandhi, Advocate for petitioners.

Coram : N.M. Jamdar, J.

Date : 5 December 2018.

ORAL ORDER:

1. By this petition, the petitioners have challenged the order passed by the learned District Judge, Sangamner, dated 4 June 2018 partly allowing the application filed by the petitioners to produce certain documents on record during the hearing.

2. The learned Counsel for the petitioners submitted that the learned District Judge has rejected the production of documents

mentioned at serial No. 6 to 9 in the list on the ground that there was no due diligence on the part of the petitioners, however, the learned District Judge has not considered that the petitioners had also invoked the provisions of Order XLI Rule 27(1)(b) of the Civil Procedure Code that the documents were germane for adjudication of the appeal.

3. There is no error in the view taken by the learned District Judge that the petitioners were not diligent. The explanation that the petitioners were not aware of the mutation entry and that the advocate did not advise them to file the same in the suit, are not cogent grounds.

4. As regards the provisions of Order XLI Rule 27(1)(b) is concerned, it empowers the Appellate Court to permit the production of certain documents, if according to the Appellate Court they are necessary for proper adjudication. The learned District Judge has not decided that these documents are not germane for adjudication. In view of this position, the question whether the documents are germane for adjudication of the appeal, is left open to be considered by the learned District Judge at the time of hearing. If the learned District Judge is of the opinion that these documents are necessary it is always open to the learned District Judge to invoke the said power.

5. With this clarification, the writ petition is disposed of.
6. In view of the disposal of the petition, the civil application does not survive and stands disposed of.

N.M. Jamdar, J.