

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

**WRIT PETITION NO. 11423 OF 2018**

**TULSIBHAI VELJIBHAI PARMAR THROUGH LRS PRAFULLA  
TULSIBHAI PARMAR AND OTHERS**

**VERSUS**

**CHENSUKH DHANRAJ MUTHA AND OTHERS**

...

Advocate for the Petitioners : Shri V. S. Bedre  
Advocate for Respondent Nos. 1 to 3 : Shri P. P. Kothari

...

**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 15<sup>th</sup> OCTOBER, 2018.**

...

***PER COURT :***

1. I have heard the learned Advocate for the petitioner and the learned Advocate who has appeared on caveat for respondent No.1 and has instructions to appear on behalf of all the respondents.

2. The petitioner/Appellant before the Appellate Court is aggrieved by the order dated 06/07/2018, by which, his application Exhibit 13 filed in RCA No. 386/2011, seeking leave to adduce further evidence through certain documents, has been rejected.

3. Though the learned Advocates for the respective sides have canvassed all their contentions as are set out in the

Appeal, I find that the petitioners have not rendered any assistance to the Appellate Court.

4. An application for seeking leave to adduce further oral and documentary evidence, filed under Order 41 Rule 27 of the Code of Civil Procedure, has to be heard alongwith the main Appeal, together, as is the law crystalized by the Honourable Apex Court in the following three cases :-

*1] Malayalam Plantations Ltd vs. State Of Kerala, 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.*

5. Had the litigating sides cited the above reproduced reports, the Appellate Court would have been better assisted and would not have passed the impugned order dated 06/07/2018 and would have heard Exhibit 13 alongwith the main Appeal.

6. In view of the above, this petition is partly allowed. The impugned order dated 06/07/2018 is set aside by imposing costs of Rs. 5,000/- (Rupees Five Thousand only), which, by the consent of the respondent, would be donated by the petitioners for the treatment of the poor patient.

7. Application Exhibit 13 is, therefore, restored in RCA No. 386/2011. The petitioner shall deposit an amount of Rs. 5,000/- (Rupees Five Thousand only) with the Government Medical College and Hospital, Aurangabad, through **Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft ( Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad**) on or before 01/11/2018.

8. The Appellate Court would proceed to hear RCA No. 386/2011 alongwith the application Exhibit 13 and delivered its final judgment on the merits of the matter, as expeditiously as possible and in any case, on or before 31/12/2018 as it is informed that the Appeal is posted for final arguments on 17/10/2018.

**(RAVINDRA V. GHUGE, J.)**

shp/-