

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

31 WRIT PETITION NO. 4420 OF 2017

RAVAN TANKA BORASE
VERSUS
DEEPABAI PRAVIN BORASE

.....

Advocate for Petitioner : Mr. D.A. Mane h/f Mr. Pingale D.M.

Advocate for Respondent-sole : Mr. S. B. Bhosale h/f

Mr. Brahme Shailesh P.

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CORAM : V. K. JADHAV, J.

DATED : 19th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner/appellant has filed applications exhibits 10 and 13 respectively before the District Court in his pending Regular Civil Appeal No.55 of 2011 under Order 41 Rule 27 of the Code of Civil Procedure, 1908, for production of additional evidence and the Ad-hoc District Judge-1, Shahada, District Nandurbar, by the impugned common order dated 17.08.2016 passed below exhibits 10 and 13, rejected the said applications. Hence this Writ Petition.

3. The learned counsel for the petitioner submits that the petitioner is the original defendant and being aggrieved by the judgment and decree passed by the trial court about the maintenance, preferred Regular Civil Appeal No.55 of 2011 which is pending before the Ad-hoc District Judge-1, Shahada. By way of application exhibit 10, the petitioner is seeking permission to adduce additional evidence of certain immovable properties with mutation extract. Further, by application exhibit 13, the petitioner is seeking permission to adduce additional evidence in respect of the documents pertaining to a plot and electricity bills. The learned counsel submits that even though the learned Ad-hoc District Judge-1 is yet to hear the appeal finally, rejected the said applications by almost touching to the merits of the pending appeal. The learned counsel submits that in terms of the provisions of Order 41 Rule 27 Clause (b), the appellate court, if requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, may permit the party to produce additional evidence whether oral or documentary in the appellate court. The learned counsel submits that the appellate court may postpone consideration of the said applications

exhibits 10 and 13 respectively, till the hearing of the appeal and should take up the same at the time of hearing of the appeal on merits so as to find out whether the evidence sought to be produced is relevant and bearing on the issues involved.

4. The learned counsel for the respondent/original plaintiff submits that the petitioner is trying to fill up the lacuna by seeking production of certain documents in the pending appeal. The learned counsel submits that under the provision of Order 41 Rule 27 of CPC, the appellate court has power to allow the document to be produced and witness to be examined, but the requirement of the said court must be limited to those cases whether it is necessary to obtain such evidence for enabling it to pronounce the judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage. The learned counsel, in order to substantiate his contention, placed reliance on the decision in the case of *Union of India v. Ibrahim Uddin*, reported in (2012) 8 SCC 148.

5. It appears that the suit is in respect of civil maintenance and the parties are disputing the status of certain properties as

on the date of institution of the suit and even at the later stage. It is well settled that in application under Order 41 Rule 27 of CPC, the appellate court may postpone consideration of the said application till hearing of the appeal and should take up the same at the time of hearing of the appeal on merits. The appellate court may consider whether the said evidence is relevant and bearing on the issues involved in the appeal. It appears that the appellate court has rejected the said applications exhibits 10 and 13 respectively at a premature stage when the appellate court is yet to hear the appeal finally. Even in the case of *Union of India v. Ibrahim Uddin* (supra), the Supreme Court has observed that the stage of consideration of such an application filed under Order 41 Rule 27 of CPC is at the time of final hearing of the appeal on merits. The learned Judge of the trial court may also consider the observations made by the Supreme Court in para nos. 36 to 39 of the above case while dealing with the said applications at the time of final hearing of the appeal, on its own merits. However, this Writ Petition is required to be allowed to that extent as observed in the foregoing paragraphs. Hence the following order:

ORDER

- I. The Writ Petition is hereby partly allowed. No costs.
- II. The impugned common order dated 17.08.2016 passed below exhibits 10 and 13 in Civil Appeal No.55 of 2011 by the Ad-hoc District Judge-1, Shahada, is hereby quashed and set aside.
- III. The first appellate court shall consider the applications exhibits 10 and 13 at the time of final hearing of the appeal by keeping in mind the observations made herein above.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/