

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6353 OF 2016**

Rajukumar Anant Chaurasia	]	Petitioner
Vs.		
Pandurang Dadu Dhere	]	Respondent
.....		
Mr. Suhas Oak i/b Mr. Sagar Joshi, for petitioner.		
Mr. Kirankumar Phakade, for respondent.		
.....		

CORAM : R.G. KETKAR, J.

DATE : 20TH JUNE, 2018.

P.C:

Heard Mr. Oak, learned Counsel for the petitioner and Mr. Phakade, learned Counsel for the respondent at length.

2. Rule. Mr. Phakade waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and order dated 22nd March, 2016 passed by the learned District Judge-10, Thane below Exhibit 15 in Civil Appeal No.164 of 2011. By that order, the learned District Judge rejected the application made by by the plaintiff under Order-XLI, Rule-27 of the Code of Civil Procedure, 1908 for production of additional evidence.

4. In support of this Petition Mr. Oak has taken me through paragraphs 3 to 9 of the application Exhibit 15 and the impugned order. He submitted that while rejecting the application, the learned District Judge has considered assertions made in paragraph 5 only. He did not advert to the assertions made in paragraphs 3,4,6 to 9.

5. Mr. Phakade fairly did not dispute this position. As the learned District Judge has not considered assertions made in paragraphs 3,4,6 to 9 at the application Exhibit 15, on this short ground, impugned order deserves to be set aside thereby restoring application Exhibit 15 for deciding the same afresh. Hence, the following order;

- [1] Impugned order dated 22nd March, 2016 is set aside. Exhibit 15 is restored to the file of the learned District Judge-10, Thane.
- [2] The learned District Judge will decide the application afresh after considering the assertions made in the application and reply filed by the respondent.
- [3] All contentions of the parties in that regard are expressly kept open.
- [4] Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]