

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.21104 OF 2018

Virji G. Jobanputra ... Petitioner
Vs.
Bhaskar Namdev Khandke (decd) through
LRs Premlata B. Khandke and others ... Respondents

Mr. Chandrakant N. Chavan for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 4, 2018

P.C. :

Not on Board. At the request of Mr. Chavan, learned Counsel for the petitioner, taken up for admission.

2. This Petition takes exception to the order dated 26.06.2018 passed by the Appellate Bench of the Small Causes Court below exhibit-1 in Appeal No.7 of 2012. By that order, the Appellate Court has directed the petitioner / appellant to proceed with the appeal expeditiously and conclude his arguments in all respects by the end of September 2018. It was also clarified that in the event of failure of the petitioner to conclude the arguments, the arguments of the petitioner shall stand concluded and respondents will conclude their arguments, if any, by the end of January, 2019. The Appellate Court observed that the application for amendment so filed will be heard along with the appeal.

3. Mr. Chavan submitted that apart from the prayer for amendment of the written statement, petitioner has also prayed for leading additional evidence under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). He invited my attention to paragraph 5 of the impugned order. In paragraph 5, the Appellate Court observed thus,

“5. So far as the present application for amendment of the written statement and prayer to allow to lead additional evidence and to produce the document at appellate stage are concerned, in view of the position settled by the Hon'ble Supreme Court, such an application shall go with the appeal. During the course of arguments, if it is satisfied that the proposed amendment is necessary for resolving controversy between the parties or the documents sought to be produced are relevant and important for such purpose, then such prayers can very well be considered and appropriate order can be passed in that regard. At this stage, we see absolutely no ground to entertain such type of application.”

4. A perusal of the above paragraph shows that the Appellate Court had in mind the decision of the Apex Court in the case of ***Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148***, and therefore, directed that the application for adducing evidence will be heard along with the main appeal.

5. Mr. Chavan assures that the petitioner will invite attention of the Appellate Court to the application made for amending the written statement as also for adducing additional evidence and request the Appellate Court to decide that application along with the main appeal.

6. The Appellate Court, while disposing of the Appeal finally, will also decide the application made by the petitioner for amending written statement and for adducing additional evidence. Subject to this clarification, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)