

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12605 OF 2018

M/s. Bhimale and Sons

...Petitioner

vs.

Moti Dinshaw Irani and Others

...Respondents

Mr. Nitin Mulye, for the Petitioner

Mr. S.N. Gorwadkar, Sr. Counsel a/w. Mr. S.H. Gangal I/b. Mr. Ravi Shinde, for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 05, 2018

P.C.:

. Heard learned Mr. Mulye, learned counsel for the Petitioner and Mr. Gorwadkar, learned Sr. counsel for the Respondents.

2. Rule.

3. Rule is made returnable forthwith with the consent and request of learned counsel for the parties.

4. The challenge in this Petition is to order dated 27th June, 2018 by which the Appeal Court has rejected the Petitioner's application (Exhibit 40) seeking leave to produce the additional evidence under Order 41 Rule 27 of C.P.C.

5. Admittedly, the Civil Appeal No. 560 of 2014 is pending

before the Appeal Court. The Application for production of additional evidence under Order 41 Rule 27 of C.P.C was dismissed at a stage prior to and not along with the consideration of the Appeal for final hearing.

6. In ***State of Rajasthan vs. T.N. Sahani and Otherse (2001) 10 Supreme Court Cases 619*** the Hon'ble Apex Court has held that the application under Order 41 Rule 27 should be decided along with the Appeal.

7. Therefore, without going into the merits of the matter and only on the ground that the application under Order 41 Rule 27 should not have been taken up for consideration, at this stage, the impugned order dated 27th June, 2018 is set aside.

8. The Petitioner's application (Exhibit 40) is restored for consideration before the Appeal Court. The said application to be disposed of along with the main Appeal as was held in the case of ***T.N.Sahani*** (supra).

9. The rule is made absolute to the aforesaid extent.

10. There shall be no order as to the costs.

11. It is once again made clear that this Court has not adverted to the merits of the matters and therefore rival contention on the merits of the matter are kept open for determination by the

Appeal Court in accordance with law.

12. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)