

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2655 OF 2018

Shri. Arjun Kishanchand Lalwani	...Petitioner
<i>Versus</i>	
Shri. Suryakumar Gangadhar Bajpai	...Respondent

....
Mr. Prathamesh A. Gokhale, Advocate for the Petitioner.
Ms. Jyoti Bajpayee, Advocate for the Respondent.
....

CORAM : R. G. KETKAR, J.

DATE : 21st MARCH, 2018

P.C.

1. Heard Mr. Prathamesh Gokhale, learned counsel for the petitioner and Ms. Jyoti Bajpayee, learned counsel for the respondent, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 27.9.2017 passed by the learned District Judge-8, Nashik below Exhibit-17 in Civil Appeal No.177/2015. By that order, the learned District Judge allowed the application made by the respondent under Order XLI Rule 27 of Code of Civil Procedure, 1908 (for short, 'C.P.C.')
3. In support of this Petition, Mr. Gokhale strenuously submitted that the learned District Judge was not justified in allowing the

application. He heavily relied upon the decision of **Union of India vs. Ibrahim Uddin and another, (2012) 8 SCC 148**. In any case he submitted that the learned District Judge should have considered this application only at the time of final hearing of the appeal and not during pendency of the appeal. He heavily relied upon paragraphs-49 to 52 of that decision.

4. On the other hand, Ms.Bajpayee submitted that in the application itself the respondent contended that after the decision of the trial Court and during pendency of the appeal the petitioner herein had transferred the liquor license in favour of Ashok Bairumal Tehalani and said information was received under Right to Information Act, 2005. She submitted that one of the grounds for eviction is reasonable and bonafide requirement. The learned District Judge was, therefore, justified in allowing the application during pendency of the appeal.

5. I have considered the submissions of Mr. Gokhale. I have also perused the material on record. Order XLI Rule 27 of C.P.C. reads thus:

“
ORDER XLI
APPEALS FROM ORIGINAL DECREES

27. Production of additional evidence in Appellate Court.-- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if--
(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought

to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

6. Mr. Gokhale relied upon the decision of **Ibrahim Uddin** (supra) to firstly, contend that no case is made out for production of additional evidence and secondly, the application ought to have been considered at the stage of hearing of the main Appeal and not during pendency of the appeal. I do not find any merit in any of the submissions. In paragraph-39 of that report, the Apex Court observed that in the absence of satisfactory reasons for non-production of the evidence in the trial Court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower Court is not entitled to the indulgence of being allowed to give further evidence under this Rule. In the present case, the respondent came with the case

that the fact of transfer of liquor license by the petitioner came to their knowledge only after the decision of the suit and during pendency of the appeal.

7. Reliance is placed on paragraph-49 of that decision to contend that the stage of consideration of the application under Order XLI Rule 27 of C.P.C. is at the time of hearing of the appeal. It is in the context of Order XLI Rule 27(b) of C.P.C. which lays down that if the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined. The case made out by the respondent is under Order XLI Rule 27(aa) and not under clause (b) thereof. In view thereof, reliance placed on paragraph-49 of **Ibrahim Uddin's** case (supra) does not advance the case of the petitioner. Hence, petition fails and the same is dismissed.

8. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in any proceedings as contemplated by section 105(1) of C.P.C.

(R. G. KETKAR, J.)