

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 63 OF 2018

Mr. K. Suresh
and others

...Applicants

Versus

Mrs. Venkata Subramaniam Meenakshi
And Ors.

...Respondents

....

Ms. Zenobia S. Irani, Advocate for the Applicants.

Mr. Durgaprasad Sabnis i/b. Lex Firmus, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 20th AUGUST, 2018

P.C.

1. Heard Ms.Zenobia Irani, learned counsel for the applicants and Mr.Durgaprasad Sabnis, learned counsel for the respondents, at length.

2. Leave to convert this Civil Revision Application into Writ Petition is granted. Amendment shall be carried out within one week from today.

3. By this Petition, the petitioners take exception to the order dated 30.10.2017 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-35 in (A-1) Appeal No.81/2013. By that order, the Appellate Court rejected the application filed by the petitioners under Order XLI Rule 27 of Code of Civil Procedure, 1908

(for short, 'C.P.C.'). The petitioners contended that the original plaintiff died on 20.12.2015 and hence his bonafide requirement as well as hardship has been extinguished. The petitioners, therefore, desired to lead evidence on this aspect.

4. By separate order passed today in C.R.A. No.62/2018, I have held that the requirement of the original plaintiff is not extinguished on account of his death as the plaintiff came with the case of requirement of his wife as also his daughter and son-in-law. Even otherwise after perusing the application no case is made out for adducing additional evidence.

5. In the case of *Union of India v. Ibrahim Uddin and another, (2012) 8 SCC 148*, Apex Court has exhaustively dealt with the provisions of Order XLI Rule 27 of C.P.C. from paragraphs-36 to 51. In paragraph-36, it was observed that the general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 Code of Civil Procedure enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not

apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

6. In paragraph-38 it was observed that Order XLI, Rule 27 does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. In paragraph-39 it was observed that It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. In the absence of satisfactory reasons for the 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 paragraph-41 it was observed that the words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment. Apex Court held that an

application for taking additional evidence has to be considered with circumspection, provided it is covered under either prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. The power so conferred upon the Court by the Code ought to be very sparingly exercised and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case.

7. Applying the tests laid down by Apex Court in the aforesaid decision and considering the averments made in the application Exhibit-35, no case is made out for production of additional evidence. Hence, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)