

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO.26 OF 2019
WITH
CIVIL APPLICATION NO.4290 OF 2019
IN AO/26/2019

PRAKASH AUTOMATIC XEROX, THROUGH IT'S PROPRIETOR, VINAYAK
SOPANRAO KAMBLE
VERSUS
THE STATE OF MAHARASHTRA, THROUGH COLLECTOR, PARBHANI
AND ANOTHER

...
Advocate for the Petitioner : Shri Patil Milind M. (Beedkar)
AGP for Respondents 1 and 2 : Shri S.R.Yadav
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th April, 2019

Per Court:

1 This matter was heard for sometime on 09.04.2019 and was posted today to enable the learned AGP to gather instructions as to whether, an application under Order XLI Rule 27 of the Code of Civil Procedure, seeking permission to produce the additional evidence, oral and documentary, was filed in Regular Civil Appeal No.48/2018. The learned AGP has gathered instructions from the learned Government Pleader appearing before the Appellate Court, Parbhani that no such application was filed.

2 The issue raised by the Appellant in this appeal is that the Appellate Court could not have set aside the judgment of the Trial Court and could not have remitted Regular Civil Suit No.521/2012 to the Trial Court for leading oral and documentary evidence, on the basis of the documents that were produced before the Appellate Court, without filing an application under Order XLI Rule 27.

3 I find from the impugned order and especially paragraphs 6, 8 and 9 that the Appellate Court has taken on record the copies of the account extract and similar such material and on the basis of the same, has concluded that proper oral and documentary evidence was not led by the parties before the Trial Court and therefore, the suit needs to be remitted for a fresh decision.

4 The law insofar as leading additional oral and documentary evidence by invoking Order XLI Rule 27 of the Code of Civil Procedure is well settled in view of the judgments delivered by the Honourable Supreme Court in the matters of *Malyalam Plantations Limited vs. State of Kerala and another*, AIR 2011 SC 559, *Union of India vs. Ibrahim Uddin and another*, (2012) 8 SCC 148 and *Andisamy Chettiar vs. Subburaj Chettiar*, AIR 2016 SC 79. If any of the parties before the Appellate Court is desirous of producing additional evidence, the same cannot be permitted without the leave of the court and the procedure for doing so is by taking out an application under Order XLI Rule 27, which is

to be considered along with the appeal at the final hearing stage.

5 In view of the above, this Appeal from Order is partly allowed. The impugned judgment of the Appellate Court dated 01.01.2019 is quashed and set aside. Regular Civil Appeal No.48/2018 shall stand restored to the file of the learned District Judge at Parbhani. The Respondents, who are the Appellants before the Appellate Court, are at liberty to file an application under Order XLI Rule 27 for placing on record the additional documents/ evidence as was done informally earlier, which led to the delivering of the impugned judgment.

6 Needless to state, such an application and the say of the original plaintiff thereon, would be considered along with the Regular Civil Appeal while hearing the said proceedings finally.

7 The litigating sides shall appear before the Appellate Court on 10.06.2019. The Appellants shall enter their application for producing the additional documents/ evidence as noted above on the same date. The Plaintiff would be at liberty to enter the written say to such an application and the Appellate Court would consider the same while deciding the appeal finally.

8 In view of the above, the pending Civil Application does not survive and stands disposed of.