

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

WRIT PETITION NO.10453 OF 2019

RAGHUNATH SAHEBRAO MANE THROUGH LRS RAMAKANT
RAGHUNATH MANE
VERSUS
CITY MUNICIPAL COUNCIL AMBAJOGAI THORUGH CHIEF
OFFICER AND OTHERS

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Advocate for the Petitioner : Shri P. P. More
Advocate for the Respondent No.1 : Shri V. V. Bhavthankar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 09th OCTOBER, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 20/02/2018, by which, application Exhibit 42/D seeking leave for production of documents has been rejected on the ground that the documents were not produced before the Trial Court for the reason that there was a proceeding pending in another Court. This cannot be a ground for production of documents in an Appeal in view of Order XLI Rule 27 of the Code of Civil Procedure.

2. The learned Advocate appearing for respondent No.1 has

strenuously opposed this petition and prays for costs. He submits that petition deserves to be dismissed. The impugned order is neither perverse nor erroneous.

3. The Honourable Apex Court has laid down the law in the following judgments :

(1) Malayalam Plantations Limited Vs. State of Kerala and another [(2010) 13 SCC 487] = [AIR 2011 SC 559].

(2) Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148] = [2013 AIR SCW 2572].

(3) A. Andisamy Chettiar Vs. A. Subburaj Chettiar [(2015) 17 SCC 713] and

(4) Jagdish Prasad Patel (Dead) through LR's & another Vs. Shivnath & others [(2019) 6 SCC 82]

4. Vide the above referred judgments, the law is now crystalized that an application under Order XLI Rule 27 of the CPC, has to be heard alongwith the main Appeal.

5. In view of the above, this petition is partly allowed. The impugned order dated 20/02/2018 is quashed and set aside.

The application for seeking permission to produce the documents Exhibit 42/D dated 26/09/2017 stands restored to the file in Regular Civil Appeal No. 83/2009 which is posted on 10/10/2019 for final arguments. The Trial Court would, therefore, permit the petitioner to address the Court on application Exhibit 42/D alongwith the Appeal on 10/10/2019 and decide the Appeal with Exhibit 42/D, together, expeditiously.

(RAVINDRA V. GHUGE, J.)

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