

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7141 OF 2018

Santosh s/o Shaligram Jaiswal,
Aged about 46 years, Occu-Business,
R/o Seven Hill Colony,
Aurangabad

– PETITIONER

VERSUS

1. Sharadchandra s/o Kanhayalal Shah,
Aged about 69 years, Occu-Business,
R/o Pandaribag, Aurangabad,
2. Gunwanti w/o Kanakchandra Shah,
Aged about 68 years, Occu-Household,
R/o 172, D.Kamalanagar, Delhi,
3. Shrimati Chandrakalaben w/o Ramniklal Shah,
Aged about 62 years, Occu-Household,
R/o Pandaribag, Aurangabad,
4. Mayur s/o Ramniklal Shah,
Aged about 46 years, Occu-Business,
R/o Pandaribag, Aurangabad,
5. Chetan s/o Ramniklal Shah,
Aged about 41 years, Occu-Business,
R/o Pandaribag, Aurangabad,
6. Mrs.Shefali w/o Brijpaldas,
Aged about 49 years, Occu-Household,
R/o 31-32, Bhaironath,
Varanasi, Uttarpradesh.

– RESPONDENTS

Mr.V.I.Thole, Advocate for the petitioner.
Mr.D.K.Kulkarni, Advocate for respondent Nos. 1 to 6.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/03/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is the appellant in RCA No.525/2012 before the Appellate Court. An application under Order 41 Rule 27 of CPC was filed seeking leave to produce additional evidence.

3. The Appellate Court has rejected the application on the ground that there is no necessity to allow the said application in the light of the pleadings and as the documents sought to be produced are not required for the purpose of pronouncing the judgment.

4. The Law laid down by the Hon'ble Apex Court in A. Andisamy Chettiar Vs. A.Subburaj Chettiar [(2015) 17 SCC 713] was cited.

5. In my view, this issue is crystallized by the Hon'ble Apex Court in its judgments in case of Malayalam Plantations Limited Vs. State of Kerala and another (2010) 13 SCC 487] = [AIR 2011 SC 559], Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148] = [2013 AIR SCW 2572] and A.Andisamy (supra). Such applications

will have to be considered alongwith the main appeal and in the event the Appellate Court feels that the said application is without any merit, it can reject the application while delivering its judgment in the appeal. If such application is found to have merit so as to be allowed, the Appellate Court would then have to deliver its judgment considering this aspect.

6. In view of the above, the impugned order dated 25/06/2018 is set aside only because application Exh.21 was considered at a wrong stage in the pending appeal.

7. This writ petition is allowed. The said application, therefore, stands restored in RCA No.525/2012. The Appellate Court would consider Exh.21 alongwith the appeal, by giving an opportunity of hearing to the litigating sides, while addressing the Court on the main appeal. All contentions of the parties are kept open.

8. Since the appeal is posted before the Appellate Court tomorrow, the litigating sides would endeavour to complete their final arguments on the appeal as well as Exh.21, on or before 15/04/2019 and the Appellate Court would decide the said appeal on or before 29/06/2019.

9. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)