

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

WRIT PETITION NO.515 OF 2019

LAXMAN NARAYANRAO KHEDKAR
VERSUS
DNYANESHWAR PANDURANG KHEDKAR AND OTHERS

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Advocate for the Petitioner : Shri Naikwade Shivaji K.

Advocate for Respondent 1 : Shri Khande Avinash A.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 24th September, 2019

Per Court:

1 The petitioner, appellant no.2 before the Appellate Court in Regular Civil Appeal No.110/2009, is aggrieved by the order dated 31.03.2017 passed by the Appellate Court by which, the application exhibit 48 seeking permission to adduce additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, has been rejected.

2 I have heard the learned advocates for the respective sides. None has appeared on behalf of respondent nos.2, 3(1) to 3(5) and 4.

3 The Honourable Supreme Court has crystallized the law in the matters of (a) *Malayalam Plantations Limited vs. State of Kerala and another*, AIR 2011 SC 559 : (2010) 13 SCC 487, (b) *Union of India vs. Ibrahim Uddin and another*, [(2012) 8 SCC 148], (c) A.

Andisamy Chettiar vs. A. Subburaj Chettiar, [AIR 2016 SC 79 : (2015) 17 SCC 713] and (d) *Jagdish Prasad Patel vs. Shivnath, (2019) 6 SCC 82*, that the application under Order 41 Rule 27 has to be considered along with the main appeal. It appears that this petitioner insisted before the appellate court to decide the said application. Had the petitioner cited the above referred judgments of the Honourable Supreme Court, the Appellate Court would have been better assisted and could have kept exhibit 48 pending to be considered along with the appeal at the final stage.

4 The learned advocate for the contesting respondent no.1 prays for the dismissal of this petition on the ground of delay and in the alternative, prays for imposition of heavy costs.

5 In view of the above and the law crystallized by the Honourable Supreme Court, this Writ Petition is partly allowed. The impugned order dated 31.03.2017 is set aside in the light of the view taken by the Honourable Supreme Court. Exhibit 48 is restored to the file of the Appellate Court. RCA No.110/2009 shall be disposed off on or before 31.12.2019. Considering the earlier extensions granted by this court, no further extension of time would be granted.

6 The appellants shall tender a private appeal paper book, if not already filed, on or before 19.10.2019, failing which, the appeal shall stand dismissed. If such paper book is filed, the litigating sides would

conclude their oral submissions on or before 20.11.2019 and the appellate court shall deliver its judgment on or before 31.12.2019.

7 The petitioner shall deposit costs of Rs.5000/- (Rupees Five Thousand), for having belatedly approached this Court and for having not assisted the Appellate Court properly, in this Court on or before 10.10.2019.

8 The learned advocate for respondent no.1 submits that the amount deposited by the petitioner could be donated for a public cause. As such, the Registry of this Court shall transfer the said amount of Rs.5,000/- (Rupees Five Thousand) along with accrued interest, if any, to the orphanage home **“Shantivan”, Arvi, Tq.Shirur Kasar, District Beed** i.e. in the name of **“Bhavani Vidhyarthi Kalyan Pratishthan, Arvi”** by way of electronic transfer (State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995) and shall report compliance.