

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 1606 OF 2019

Uday J. Patil and anr. .. Petitioners  
vs.  
Ramesh J. Patil and ors. .. Respondents

Mr. C.G. Patil for the Petitioners.  
Mr. A.M. Adagule for Respondent Nos.1 to 5.

**CORAM : M. S. SONAK, J.**  
**DATE : 20 MARCH 2019.**

**ORAL JUDGMENT:**

1] Heard Mr. Patil, learned counsel for the petitioners and  
Mr. Adagule, learned counsel for respondent Nos.1 to 5.

2] Mr. Patil, learned counsel for the petitioners, states that  
respondent No.6 is served. He states that respondent No.6 is  
in fact supporting the case of the petitioners.

3] Taking into consideration the aforesaid, Rule. Rule is  
made returnable forthwith.

4] The challenge in this petition is to the order dated 19<sup>th</sup>  
June 2018 by which the learned Appeal Court has rejected  
the petitioners' application to produce additional evidence  
and documents under Order 41 Rule 27 of the CPC.

5] In ***Union of India vs. Irbahim Uddin and anr. - (2012) 8 SCC 148***, the Supreme Court has held that an application under Order 41 Rule 27 of the CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. In paragraph 52, the Supreme Court has held that in case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable is liable to be ignored.

6] Mr. Adagule, learned counsel for respondent Nos.1 to 5, however, places reliance upon ***A.Andisamy Chettiar vs. A.Subburaj Chettiar - (2015) 17 SCC 713*** to submit that an order either permitting or rejecting leave to produce additional evidence at the appellate stage can always be questioned in second appeal and such orders, should not be

interfered with at the interim stage.

7] In this petition, already, the stay was granted for further hearing in the appeal. The appeal is now posted for final hearing and would have proceeded, but for the interim relief granted by this Court earlier.

8] Taking into consideration the clear observations in *Ibrahim Uddin (supra)* in the peculiar facts of the present case, the interests of justice will be met if the impugned order is set aside and the learned Appeal Court is directed to take up for consideration afresh the petitioners' application under Order 41 Rule 27 of the CPC at the stage of hearing of the appeal on merits. This will be consistent with the ruling of the Supreme Court in *Ibrahim Uddin (supra)*, where, one of the precises issue which arose for consideration was the stage at which the application under Order 41 Rule 27 of the CPC is to be considered.

9] No doubt, the petitioner will have to pay costs to respondent Nos.1 to 5 because it was at the instance of the

petitioners that the learned Appeal Court was required to decide this application at the stage prior to the stage indicated in *Ibrahim Uddin (supra)*.

10] Accordingly, the impugned order is set aside. Learned Appeal Court is directed to take up for consideration afresh the petitioners' application under Order 41 Rule 27 of the CPC, at the time of hearing of the appeal on merits consistent with the law laid down by the Supreme Court in *Ibrahim Uddin (supra)*. The petitioners to pay costs of Rs.5000/- within two weeks to respondent Nos.1 to 5 collectively.

11] Rule is made absolute in the aforesaid terms. The interim order granted earlier is vacated.

12] Parties to appear before the Appeal Court on 15<sup>th</sup> April 2019 at 11.00 a.m. and produce authenticated copy of this order. The parties should not delay disposal of the appeal and application on merits and should render all possible cooperation to the Appeal Court so that the appeal and

application can be disposed of on its own merits and in accordance with law as expeditiously as possible.

13] The consideration of the application under Order 41 Rule 27 of the CPC shall be subject to payment of costs within two weeks from today without seeking any further extension. If the amount of costs are not paid/deposited within two weeks, then this petition shall be deemed to have been dismissed without further reference to this Court but with costs of Rs.5000/-. If the amount of costs are deposited, then respondent Nos.1 to 5 have liberty to withdraw the same unconditionally.

14] All concerned to act on the basis of an authenticated copy of this order.

**(M. S. SONAK, J.)**