

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1837 OF 2018

Hemant A. Mulay and ors. .. Petitioners
vs.
Santosh M. Rathii .. Respondent

Mr. Harshad Sathe a/w Burzin Bharucha I/b Mr. Nilesh
Tribhuvann for the Petitioners.
Mr. Girish R. Agrawal for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 27 MARCH 2019.

P.C. :-

1] Leave is granted to place page No.2 of the impugned
order to the memo of petition. Necessary placement to be
done forthwith.

2] Heard Mr. Sathe, learned counsel for the petitioners
and Mr. G.R. Agrawal, learned counsel for the respondent.

3] The challenge in this petition is to the judgment and
order dated 11th October 2017 by which the learned Trial
Judge is rejected the petitioners' application under Order 18
Rule 17 of the CPC to recall the petitioner-plaintiffs

4] Mr. Sathe, learned counsel for the petitioners, submits that though the application was styled as one under Order 18 Rule 17 of CPC, section 151 of the CPC also invoked. He submits that in any case, they were no specific reference to section 151 of the CPC. The Court, can always exercise inherent powers and permit the petitioners/plaintiffs to recall them for producing additional documents. He points out that in the present case, the additional documents came to the knowledge of the petitioners/plaintiffs after conclusion of the evidence.

5] Mr. Sathe relies upon the following judgments in support of the aforesaid contentions.

- “(i) Godrej Consumer Products Ltd. vs. P.C. Chandra Germ Pvt. Ltd. And anr. - 2017 SCC OnLine Cal 745;***
- (ii) Ram Rati vs. Mange Ram and ors - MANU/SC/0260/2016***
- (iii) Vadiraj N. Vernekar (D) through Lrs. vs. Sharad Chand Prabhakar Gogate - MANU/SC/0448/2009;***
- (iv) K.K. Velusamy vs. N. Palanisamy - MANU/SC/0267/2011;***
- (v) Bagai Construction through its proprietor Lalit Bagai vs. Gupta Building Material Store - (2013) 14 SCC 1;***

**(vi) *Khadi Kissan vs. Thubra Kissan and anr.*
(1986 Scc Online Ori.48)”**

6] Mr. Agrawal, learned counsel for the respondent, defends the impugned order on the basis of reasoning reflected therein.

7] There can be no dispute as regards the powers of the Court under section 151 of the CPC. However, the moot question in this case is whether such powers were required to be exercised in the facts and circumstances of the present case. Merely, the petitioners had not made out any case for exercising of powers under Order 18 Rule 17 of CPC, such power, is normally exercised where the Court requires any clarifications in the evidence which is already laid. This is not the case in the present matter.

8] The provisions of section 151 of CPC do not require that in every case, the petitioner is to granted leave to recall himself after conclusion of his evidence. In the present case, the evidence which the petitioners seek to produce cannot be said to be of such relevance as would make a difference to

the matter. Ultimately, these are matters of discretion and from the perusal of the impugned order, it cannot be said that discretion has been exercised unreasonably or contrary to the settled legal principles in such matters.

9] Accordingly, no case is made out to interfere with the impugned order. The petition is liable to be dismissed and is hereby dismissed.

10] The interim order, if any, stands vacated.

(M. S. SONAK, J.)