

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.536 OF 2019

Nishad Anil Telang	]	Petitioner
Vs.		
Ajita Jayram Patki and another]		Respondents

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Mr. Saket Mone & Ms. Chaitrika Patki i/b Vidhi Partners, for the Petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 16th JANUARY, 2019.

P.C.

Not on board. At the request of Mr. Mone, taken up in the production board.

2. Heard Mr. Mone, learned Counsel for the petitioner.

3. By this Petition under Article 227 of the Constitution of India, the petitioner/defendant has challenged the order dated 1st November, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 15 in (2a) Appeal No.398 of 2015. The petitioner has filed application Exhibit 15 under Order-XLI, Rule-27 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for adducing additional evidence. The Appellate Bench was of the view that considering the nature of the application, it be heard along with the main appeal. In other words, the Appellate Court has not rejected the application filed by the petitioner and has deferred hearing of the application along with the main appeal.

4. Mr. Mone submits that it may be clarified that in the event of the Appellate Court allowing the application under Order-XLI, Rule-27, it will also consider the provisions of Order-XLI, Rules-28 and 29.

5. In view thereof, on the motion made by Mr. Mone, Petition is allowed to be withdrawn and as such is disposed of. The petitioner will be at liberty to advance submissions based upon Rules 28 and 29 of Order-XLI, in case the Appellate Court allows the application.

6. It is made clear that I have not examined merits of the application Exhibit 15. All contentions of the parties are expressly kept open. Order accordingly.

[R.G. KETKAR, J.]