

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 2884 OF 2018

PERFECT SCALE COMPANY	]	
By and through its Partners	]	
Juzar M. Andamanwala and others.	]	Petitioners
Vs.		
Nitin Keshav Palav	]	Respondent

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Mr. Mahendra J. Karvawat i/b Priyanka A. Khakhadia, learned Counsel for the Petitioners.

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CORAM : R.G. KETKAR, J.

DATE : 19TH MARCH, 2019.

P.C.

Not on board. At the request of Mr. Karvawat, taken up for admission.

2. Heard Mr. Karvawat, learned Counsel for the petitioners.

3. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 5th July, 2017 passed by the learned Ad-hoc District Judge-1, Pune below Exhibit 66 in Regular Civil Appeal No.254 of 2013. By that order, the learned District Judge rejected the application Exhibit 66 made by the petitioners for review of the order dated 8th November, 2016. The petitioners had filed application dated 1st July, 2016 for calling Assistant Engineer of Pune Municipal Corporation as a witness to produce sanctioned/approved plan bearing No.269 dated 25th June, 1968 in respect of the House property City Survey No.273, Ganesh Peth, Pune. By

order dated 8th November, 2016, the learned District Judge passed the following order;

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“Application will be considered while deciding the appeal”.

The petitioners made oral application for review of the order dated 8th November, 2016. It further appears that the learned District Judge entertained oral application and by the impugned order observed that oral prayer made by the Advocate for the petitioners to review the order dated 8th November, 2016 is rejected.

4. In the first place, no oral application for review can be entertained. Be that as it may, secondly, the order dated 8th November, 2016 as also the impugned order does not cause any prejudice to the petitioners. As mentioned earlier, by order dated 8th November, 2016, the learned District Judge has directed that the application made by the petitioners under Order-XLI, Rule-27 of the Code of Civil Procedure, 1908 (for short 'C.P.C') will be heard along with the main appeal. Needless to observe that if the application for adducing additional evidence is allowed, the learned District Judge will have to follow the procedure under Order-XLI, Rule-28, 29 etc. In case, the learned District Judge comes to the conclusion that no case for adducing additional evidence is made out then there is no need to follow procedure laid down under Order-XLI, Rules 28 and 29 etc.

5. In view thereof, no case is made out for interfering the impugned order. Hence, the Petition fails and the same is dismissed.

6. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the

impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]