

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3 of 2019
In
Civil Revision Application (Stamp) NO. 32765 OF 2018

Mr. Hayyat Badshah	...Applicant
<i>Versus</i>	
Smt. Rukmani Krishna Turbhekar	...Respondent

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Mr. Joel D'Souza a/w. R.M. Vanoo i/b. Iqbal Qureshi, Advocate for the Applicant.

Mr. R.M. Haridas, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 04th MARCH, 2019

P.C.

1. Heard Mr. Joel D'Souza, learned counsel for the applicant and Mr.R.M. Haridas, learned counsel for the respondent, at length.
2. This is an application under Order XLI Rule 27(aa) of the Code of Civil Procedure, 1908 (for short,'C.P.C.') for production of additional evidence.
3. Mr. D'Souza submitted that by notification dated 18.1.1979, the area where the suit premises is situate, is declared as slum area under Section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. He has taken me through the application to contend that for the reasons stated therein the applicant has made out a case for adducing additional evidence.

4. On the other hand, Mr. Haridas submitted that the notification dated 18.1.1979 was challenged before the Slum Tribunal by filing appeals. By order dated 28.2.1980, the Tribunal allowed the appeals and set aside the declaration in respect of the properties involved in the appeals. The area where suit premises is situate was also subject matter of the appeals. Aggrieved by that decision, Writ Petition No.6683/2009 is instituted. By order dated 1.7.2010, the petition is admitted by issuing rule and interim relief in terms of prayer clauses (b) and (c) is granted. In other words, he submitted that as on date, the notification is not restored by setting aside the order of the Tribunal.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In the case of ***Union of India v. Ibrahim Uddin and another, (2012) 8 SCC 148***, Apex Court has exhaustively dealt with the provisions of Order XLI Rule 27 of C.P.C. from paragraphs-36 to 51. In paragraph-36, it was observed that the general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 of C.P.C. enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions

laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

6. In paragraph-38 of that decision, the Apex Court observed that Order XLI, Rule 27 does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. In paragraph-39 it was observed that it is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. In the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. In paragraph-40, it was observed that the inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a “substantial cause” within the meaning of this Rule. The mere fact that certain evidence is

important, is not in itself a sufficient ground for admitting that evidence in appeal. In paragraph-41 it was observed that the words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment. Apex Court held that an application for taking additional evidence has to be considered with circumspection, provided it is covered under either prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. The power so conferred upon the Court by the Code ought to be very sparingly exercised and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case.

7. It is the case of the applicant that on 18.1.1979, the area where the suit premises is situate was declared as a slum area. However,

no attempt was made either before the trial Court or even before the Appellate Court for producing that notification.

8. Applying the test laid down in *Union of India v. Ibrahim Uddin's case (supra)* to the facts of the present case, no case is made out for allowing the application. Even otherwise, the notification was subject matter of appeals before the Slum Tribunal. By order dated 28.2.1980, the appeals were allowed and the declaration was set aside in respect of the properties involved in the appeals. It is also not in dispute that the area where the suit premises is situate was also subject matter of the appeals.

9. Mr. D'Souza submitted that Writ Petition No.6683/2009 is pending for final hearing in this Court and this Court has granted interim order. However the fact remains that as of date neither the order of the Tribunal is set aside nor the notification is revived. In view thereof, no case is made out for permitting additional evidence. Hence, Civil Application fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)