

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO.542 OF 2019**

M/s Shri Balaji Roadways

(I) Ltd

... Petitioner

Versus

B.G.T.A. Godavari Premises

Co-operative Society Ltd

And Others

... Respondents

.....

Mr. P. Ranjan I/b Halai & Co. for the Petitioner.

Mr. Kishor Patil I/b Mr. Dipak Mane for Respondent No.1.

Mr. Manish Upadhye, AGP a/w Mr. Kedar Dighe, AGP for Respondent No.3.

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**CORAM : S.C. GUPTE, J.**

**DATE : 22 APRIL 2019**

**P. C. :**

. Heard learned Counsel for the parties.

2 **Rule.**

3 Rule is taken up for hearing forthwith by consent of learned Counsel.

4 This petition challenges an order passed by Co-operative Appellate Court on a miscellaneous application (Exhibit 10) filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 ("Code"). The application was for leave to file additional documents. The Co-operative Court has held in its order that even though the appellant has satisfied that proposed

documents are relevant for adjudication of the appeal, this would have to be considered at the time of final hearing of the appeal on merits, though the Co-operative Appellate Court has also rendered finding why the appellant had failed to satisfy the court of any of the contingencies to allow it to lead additional evidence at the appellate stage. Since anyway these documents, even according to the court below, are meant to be considered at the time of appeal, it is in the interest of justice if these documents are first taken on record under Order 41 Rule 27 of the Code and the parties are heard on the documents including on the question of their relevance as well as their merits. In the premises, the impugned order dated 12 December 2018 is quashed and set aside. The application, Exhibit 10, is allowed and the appeal is now remitted to the Co-operative Appellate Court for a fresh hearing in accordance with law after allowing the parties to state their respective cases on the documents which are now taken on record.

5 Rule is accordingly made absolute and the writ petition is disposed of in the above terms.

**(S.C. GUPTE, J.)**