

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.5088 of 2018
(Tulsidas Inderchand Agrawal .vs. Chandur Railway Vikas Khand Sahakari
Shetki Kharerdi Vikri Sangh and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. R.L. Khapre , Advocate for Petitioner.
Mr. H.D. Dangre, Advocate for Respondent No.1.
Mr. A.D. Sonak, AGP for Respondent No.2.

CORAM : Manish Pitale, J.
DATED : April 02, 2019.

By this writ petition, the petitioner (original plaintiff) has challenged order 05.03.2018 passed by the District Judge, Amravati (appellate Court), whereby applications filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908, have been rejected. While rejecting the said applications, the appellate Court has made an observation that the production of the said documents was not found to be necessary for rendering judgment in the appeal.

2. It is by now settled position of law that such applications ought to be taken up for consideration and decision along with the appeal for final hearing. This is because, it would enable the appellate Court to take into consideration the entire material and evidence on record to then come to a conclusion as to whether it really requires production of such documents for pronouncing judgment. In the present case, it is

apparent that the appellate Court has proceeded to decide the said applications not along with the final hearing of the appeal but separately and before taking up the appeal for final hearing. Therefore, only on this short ground, without entering into the merits of the applications filed on behalf of the petitioner, this Court is of the opinion that the impugned order deserves to be set aside and the matter needs to be remanded to the appellate Court for deciding the said applications along with the appeal at the stage of final hearing.

Hence, writ petition is partly allowed. The impugned order is quashed and set aside. The appellate Court is directed to consider the applications at Exhs. 6 and 13 filed on behalf of the petitioner for production of documents along with the final hearing of the appeal. The appellate Court is expected to dispose of the appeal expeditiously. Needless to say that all contentions of rival parties are kept open.

JUDGE