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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1842 OF 2018

Maruti Dhondiba Mergal (since deceased) through .Petitioners
Lrs.

Vs.

Tukaram Baaji Mergal (since deceased) through .Respondents
Lrs. & ors.

**WITH
CIVIL APPLICATION (ST) NO. 34995 OF 2018
IN
WRIT PETITION NO. 1842 OF 2018**

Maruti Dhondiba Mergal (since deceased) through .Applicants
Lrs.

IN THE MATTER BETWEEN

Maruti Dhondiba Mergal (since deceased) through .Petitioners
Lrs.

Vs.

Tukaram Baaji Mergal (since deceased) through .Respondents
Lrs. & ors.

Ms S. A. Prabhune, Advocate, for the Petitioners / Applicants
Mr. R. Zade, Advocate, for the Respondent Nos. 1a to 1c, 2, 3b to 3g
Mr. N. V. Khaladkar, Advocate, for the Respondent No. 5

CORAM : REVATI MOHITE DERE, J.

DATE : 02.03.2020

P. C.

. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

3. By this Petition, the Petitioners have impugned the order dated 29.11.2017 passed by the learned Ad-hoc District Judge – 3, Baramati, Pune below Exh. 22 in Civil Appeal No. 122 of 2011, by which the learned Judge was pleased to reject the Petitioners' Application seeking production of additional evidence under O. XLI, Rule 27 of the Code of Civil Procedure (for short 'C. P. C.').

4. Learned counsel for the Petitioners relied on the Judgment of the Apex Court in the matter of ***Union of India Vs. Ibrahim Uddin And Another***, reported in ***(2012) 8 SCC 148*** in support of her submission that the Petitioners' Application could not have been rejected. She submitted that having regard to the legal position, the Petitioners' Application ought to have been decided finally at the time of final hearing of the Appeal as contemplated under O. XLI, Rule 27 of the C. P. C.

5. Learned counsel for the Respondents does not dispute this legal position.

6. Perused the papers. The Petitioners in Civil Appeal No. 122 of 2011 filed an Application (Exh.22) and sought production of additional evidence under O. XLI, Rule 27 of the C. P. C. The Appellate Court vide order dated 29.11.2017 rejected the said Application after observing that the said Application was filed at a belated stage and that too without any justified reason and as such, was not maintainable.

7. It is pertinent to note that the Apex Court in the case of ***Ibrahim Uddin And Another (Supra)*** in para 85.7 has observed as under :-

“85.7. The first appellate court committed a grave error in deciding the application under Order 41 Rule 27 CPC much prior to the hearing of the appeal. Thus, the order allowing the said application is liable to be ignored as the same had been passed in gross violation of the statutory requirement.”

8. Considering the legal position, the learned Appellate Court ought not to have rejected the Petitioners' Application filed under O. XLI, Rule 27 of the C. P. C., prior to the hearing of the Appeal.

9. Accordingly, the impugned order dated 29.11.2017 passed by the learned Ad-hoc District Judge – 3, Baramati, Pune below Exh. 22 in Civil Appeal No. 122 of 2011 is quashed & set aside and the

Application (Exh. 22) is restored back to its original file. The said Application to be decided by the Appellate Court at the time of final hearing of Civil Appeal No. 122 of 2011.

10. Accordingly, the Petition is allowed. Rule is made absolute in terms of prayer clause (a).

11. The Petition is disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)