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

LETTERS PATENT APPEAL NO.114 OF 2003
IN
WRIT PETITION NO.4205 OF 2002 (D)

Bhanumati wd/o Prakash Shende and ors.

-vs-

Shankar s/o Shripal Brahmne (Dead) Thr. Legal Representatives and anr.

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

Court's or Judge's Orders.

Shri Anil S. Mardikar, Senior Advocate with Shri S. G. Joshi,
Advocate, Shri Mayank Gupta, Advocate and Shri Rushabh Khemka,
Advocate for appellants.
Shri G. B. Sawal, Advocate for respondent No.1.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATE : September 20, 2021

Civil Application (CAZ) No.7702 of 2003

By this application the appellants seek permission to amend the writ petition so as to raise additional grounds to challenge the order passed by the Co-operative Appellate Court, Nagpur in Appeal No.54/2000 which judgment has been impugned in the writ petition. By the order dated 03/12/2004 this civil application was directed to be considered when the appeal was heard finally. Accordingly we have heard the learned counsel for the parties.

On behalf of the appellants it is submitted that they desire to raise additional grounds of challenge in the writ petition. A declaration is sought that the judgment in the writ petition be set aside as being arbitrary, perverse and illegal resulting in substantial failure of justice. It is submitted that by raising additional grounds no prejudice would be caused to the

respondents.

The application is opposed by the learned counsel for the respondent No.1 by submitting that the appeal needs to be considered in the light of the grounds of challenge already raised in the writ petition.

On hearing the learned counsel and after perusing the material on record we are satisfied that the appellants deserve to be granted permission to raise additional grounds of challenge to the order passed by the Co-operative Appellate Court. It is seen that the Co-operative Court had passed an award in favour of the appellants which has been set aside by the Co-operative Appellate Court. Since it is the contention of the appellants that the Co-operative Appellate Court has not considered the entire material on record while reversing the judgment of the Co-operative Court such permission to amend and raise additional grounds of challenge deserves to be granted.

Accordingly the Civil Application is allowed and the original petitioners are permitted to amend the petition as prayed for. Needless to state that it would be open for the respondents to oppose the grounds as raised on their own merits.

The Civil Application is disposed of.

Civil Application (CAZ) No.249 of 2013

By this civil application the respondent No.1 seeks leave to place on record documents which according to them are relevant while adjudicating the appeal. By the order dated 07/08/2015 this civil application was directed to be considered

when the appeal was finally heard.

The documents sought to be placed on record are the depositions of Arvind Johrapurkar and Vinayak Ramteke in Dispute No.516 of 1997. According to the respondent No.1 these depositions are relevant for deciding the challenges raised to the order passed by the Co-operative Appellate Court.

The learned Senior Advocate for the appellants however opposes the prayer made in the application on the ground that the said depositions pertain to another dispute and not to the dispute out of which the present proceedings arise.

Since we are inclined to direct reconsideration of the writ petition on its own merits afresh, the prayer made in the civil application is granted. However, the legal effect of the aforesaid depositions with regard to the dispute in question shall be independently considered by the Court without being influenced by the fact that the respondent No.1 has been permitted to place those documents on record. All contentions in that regard are kept open.

The Civil Application is allowed and disposed of.

JUDGE

JUDGE