

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4766 OF 2019.

- 1) Chandrshekhar Madansingh Rajput,
Age 48 years, Occ. Service.
- 2) Shri. Sanjay Madansingh Rajput,
Age 46 years, Occ. Service,
Both r/o. Plot No. 24A, Survey No.
294, Bhoite Nagar, Tq. & Dist.
Jalgaon. ... **Petitioners.**

VERSUS.

Shri. Tulshiram Manga Bhole,
Age 58 years, Occ. Service,
R/o. Nashirabad Tq. & Dist.
Jalgaon. ... **Respondent.**

...

Advocate for the Petitioners : Mangesh G. Patil.
Advocate for the Respondent : Mr.Bhausahab S. Deshmukh.

CORAM : MANGESH S. PATIL, J.
DATE : 30.08.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Deshmukh waives service for the respondent. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are the tenants who have suffered a decree for eviction passed under the Maharashtra Rent Control Act. They have challenged that judgment and decree before the District Court in an appeal. They are aggrieved by the rejection of their application under Order XLI Rule 27 of the Code of Civil Procedure seeking to lead additional evidence at appellate stage. The learned District Judge has rejected the application

firstly on the ground of delay and latches, the application having been filed after three years of filing of the Appeal and, secondly, by observing that the application ought to have been requested to be decided with the main appeal.

3. I have heard the learned advocates for both the sides.

4. The petitioners are the tenants and are now seeking to lead some additional evidence to demonstrate that respondent has in his possession some other premises and the fact could be relevant for deciding the issue regarding comparative hardship.

5. Relevance of the evidence to be led apart, the fact remains that the application has been rejected on the ground of delay and latches having been filed after three years of filing of the Appeal. In my considered view, even while considering the ground of delay and latches the learned District Judge ought to have considered the relevance of the facts sought to be brought on record by way of additional evidence.

6. The second ground being relied upon by the learned District Judge is that the request for leading additional evidence should have been made while deciding the appeal itself. Though he has not mentioned it in so many words, the law is trite. Suffice for the purpose to refer to the decisions in the case of **Malayalam Plantations Ltd. v/s State of Kerala & Anr; (2010) 13 Supreme Court Cases 487, Union of India Vs. Ibrahim Uddin & anr; (2012) 8 SCC 148** etc.

7. Having considered the rival submissions and the grounds on which the District Judge has rejected the application, in my considered view it is appropriate to keep open the request of the petitioners to lead additional evidence, to be considered and decided afresh while deciding the main appeal itself. It would not cause any prejudice to the respondent as well and would extend an opportunity to the learned District Judge even to consider

the merits of the request.

7. The Writ Petition is allowed. Impugned order is quashed and set aside.

8. The learned District Judge shall now decide the application (Exh. 18) afresh along with main appeal. All the issues including maintainability, relevance etc. are kept open.

9. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-