

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

WRIT PETITION NO.10733 OF 2019

Shri. Somnath Shivram Kulkarni Petitioner

Vs.

Shubhangi Prafulla Argade & Ors. Respondents

Mr. S.R. Nargolkar a/w Arjun Kadam for Petitioner.
Mr. Chaitanya Nikte for Respondent Nos. 1, 2(a) & 3.

Coram : NITIN W. SAMBRE, J.
Date : 1ST MARCH, 2021

P.C.:

1. The Petitioner has questioned the order whereby the prayer for casting of additional issues and that of deciding an application under Order 41, Rule 27 and action pursuant to the provisions of Order 14, Rule 5 to be taken at a particular stage of proceedings.

2. The Petitioner-Plaintiff initiated Special Civil Suit No. 1708 of 2011, which was decreed by the 5th Additional Judge, Small Causes Court, Pune on 1st January, 2016. The Petitioner-Plaintiff moved an application Exhibit 38 under the Provisions of Order 41, Rule 27 CPC.

Vide impugned order dated 15th March 2019, the learned Court directed that the said application will be considered with the appeal, in view of the judgment of Apex Court referred in the said order.

3. Another application, Exhibit 36 came to be moved under the provision of Order 14, Rule 5 for casting of an additional issues. Vide order impugned dated 21st September, 2019, the Court has directed that the said application, Exhibit 36 be kept alongwith application, Exhibits 38 and 47 moved under Order 41, Rule 27 C.P.C.

4. The submissions of learned counsel for the Petitioner are, the view expressed by the Court below on the Application, Exhibit 38, even if is the correct before deciding the appeal on merits, the appellate Court is required to record findings pursuant to the prayers made on the above application.

5. Further contention is Exhibit 36, a prayer for framing an additional issues, is also required to be dealt with before deciding the appeal.

6. He would urge that the appeal is fixed for final hearing and that being so, the Appellant is expecting that the Appeal might be decided before the aforesaid Exhibits 36 and 38.

7. The Counsel for the Respondents supports the order impugned and submits that the appellate Court will pass an appropriate order in the matter.

8. If we consider the aforesaid submissions, the facts remains that the view expressed by the appellate Court while deciding an application, Exhibit 38, i.e. one under Order 41, Rule 27 that the same will be considered at the time of deciding the appeal. Said view appears to be justified, in view of law laid down by the Apex Court in the matter of Union of India Vs. Ibrahim Uddin, reported in (2012) (8), S.C.C., page 148. As far as Exhibit 36 is concerned, once the Court has observed that the same will be considered alongwith the appeal, it is expected of the appellate Court to be sensitive to the said order while deciding an appeal. The Petition is preferred by the Petitioner in anticipation that too without any legal basis.

9. In view of above observations, no case for interference is made out. The petition fails, dismissed.

(NITIN W. SAMBRE, J.)