

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

WRIT PETITION NO.1330 OF 2021

Rajesh @ Jitendra Tulsidas Vasant,
Age 47 years, Occ : Business,
R/o. Gitanjali Novelty, Morshi,
Tq. Morshi, District-Amravati.

.. Petitioner
(Original Plaintiff)

.. Versus ..

Nandkishor Bhikamchandji Gattani
Age 77 years, Occ : Business,
R/o. Morshi, Tq. Morshi,
Main Road, Ward No.8,
District – Amravati.

.. Respondent
(Original Defendant)

.....
Shri R.R. Dawda, Advocate for Petitioner,
Shri S.S. Alaspurkar, Advocate for Respondent.
.....

CORAM : N.B. SURYAWANSHI, J.
DATED : 04.08.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. This petition challenges order dated 30.01.2020 passed by the learned Ad-hoc District Judge-2, Amravati below Exh.29 in Regular Civil Appeal No.01/2011, whereby application filed by the respondent under Order 41 Rule 27 of the Code of Civil Procedure (for short 'CPC') for filing additional evidence at an appellate stage was allowed.

3. The petitioner, being the landlord, filed Regular Civil Suit No.39/2007 in the Court of Civil Judge, Junior Division, Morshi for eviction of the respondent-tenant on the ground of bona fide need to establish the business of his divorced sister, who is completely dependent on the petitioner. The suit came to be allowed and the respondent was directed to vacate the tenanted premises.

4. The respondent, being aggrieved by the decision of the suit, filed appeal under Section 34 of the Maharashtra Rent Control Act before the Principal District Judge, Amravati, which is registered as Regular Civil Appeal No.1/2011. In the said appeal, the impugned judgment and decree is stayed.

5. The respondent filed application Exh.19 for production of additional evidence under Order 41 Rule 27 of the Code, which was allowed. Thereafter, application Exh.20 was filed for production of

documents in view of subsequent events, which was opposed by the petitioner, however, the same was also allowed by the appellate court.

6. Thereafter, application Exh.23 was filed by the respondent under Order 41 Rule 28 of the Code for permission to lead additional evidence. The said application was allowed and the matter was sent to the Trial Court for recording additional evidence. Thereafter, application Exh.25 was filed for modification of order passed below Exh.23. Before passing of the order on Exh.25, application Exh.28 thereby seeking permission to amend the appeal memo and written statement and application Exh.29 for production of additional evidence under Order 41 Rule 27 of the Code were filed. The petitioner opposed the said applications. The appellate Court, by the impugned order, allowed the application Exh.29 thereby permitting the respondent to produce certified copies of three registered sale deeds dated 21.4.2016, 23.4.2018 and 2.5.2018 executed by the petitioner landlord in favour of the shop owners thereby selling the shops in the commercial complex constructed by him at another site. The respondent was also permitted to adduce evidence to the extent of sale instances. This order is impugned in the present petition.

7. Heard the learned Advocate for the petitioner and the learned Advocate for the respondent.

8. The learned Advocate for the petitioner, by placing reliance in the decision of the Apex Court in **Union of India .vs. Ibrahim Uddin and another (2012), 8 SCC 148**, submitted that unreasoned order is passed by the appellate Court. While allowing the application, it has assigned no reason and the application could not have been allowed and the same ought to have been considered at the time of final hearing of the appeal. Reliance is also placed in the **Division Bench judgment of this Court in Hasanate Taheriyah Fidayyiah .vs. Mahesh s/o Kishor Saran, 2012 (2) Mh.L.J. 884**. He further contended that taking into consideration the conduct of the respondent in filing repeated applications and prolonging the appeal is writ large on the face of record. The respondent is trying to prolong the matter. The bonafide requirement of the petitioner at the time of filing of the civil suit has to be taken into consideration by the appellate Court and not the subsequent events by which the petitioner constructed a commercial complex and sold the shops from the same. He assailed the impugned order on the ground that it is an unreasoned and cryptic order and since it is contrary to the ratio of the above authorities, the same is liable to be quashed and set aside.

9. *Per contra*, the learned Advocate for the respondent supported the impugned order, contending that earlier also the applications filed by the respondent under Order 41 Rule 27 of the Code were allowed and the respondent was permitted to lead additional evidence. The petitioner has not challenged those orders. The present application filed by the respondent was under the provisions of Order 41 Rule 27 of the Code which authorises the appellate Court to permit production of additional evidence. The appellate court had rightly allowed the said application thereby giving opportunity to the respondent to bring on record the sale deeds executed by the petitioner of the shops which he has sold in his commercial complex. He further submits that the appellate court itself is taking additional evidence which is permissible under Order 41 Rule 28 of the Code and since the documents are executed by the petitioners, no prejudice is likely to be caused to the petitioner by allowing the said application. He therefore submits that there is no merit in the petition and the same may be dismissed. He further submitted that the authorities relied upon by the learned Advocate for the petitioner are rendered in the different facts and, therefore, they are not applicable to the case of the petitioner.

10. It is a matter of record that the appeal is filed in the year 2011 and is yet to be decided finally. The record further indicates that from time to time, the respondent has filed various applications and has thereby caused delay in deciding the appeal. The application of the respondent appears to be filed under Order 47 Rule 27 (2) of the Code.

11. The **Hon'ble Supreme Court in Union of India .vs. Ibrahim Uddin and another** (supra) held :

52. "Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored."

12. In light of the above ratio, it is clear that the application for taking additional evidence on record has to be considered at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that

additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause.

13. This Court in **Hasanate Taheriyah Fidayyah** (supra) has held in para 15 that “however requirement under clause (b) is that of the Court where it finds that additional evidence is required for the purpose of enabling it to pronounce the judgment or for any other substantial cause”.

14. The impugned order does not reflect any reason as to why the production of certified copies is permitted and additional evidence is allowed to be adduced by the respondent. The impugned order is an unreasoned order and, therefore, the same cannot be sustained, particularly in view of the ratio quoted hereinabove.

15. In the result, the impugned order is quashed and set aside and appeal is directed to be decided within a period of three months from today. The appellate court shall consider the application **Exh.29** at the time of final hearing of the appeal. Rule in the above terms. No costs.

(N.B. Suryawanshi, J.)