

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

WRIT PETITION NO.7225 OF 2021

Balbhim Shivajirao Ambure & Ors.

... Petitioners

Versus

Balasaheb Shivajirao Ambure & Ors.

... Respondents

...

Mr. G. K. Naik Thigle, Advocate for Petitioners

Smt. Vibha B. Ambhure, Advocate for Respondent No.1.

Mr. K. N. Bosale h/f Mr. A. T. Kanawade, Advocate for Respondent
Nos.3 to 7

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28th September, 2022

PER COURT :-

1. The petitioners are aggrieved by the order dated 06/04/2021, passed by learned District Judge-1, Majalgaon below Exhibit-31 in Regular Civil Appeal No.2/2019, thereby rejecting application filed by petitioners/original appellants no.1 to 3 under Order 41 Rule 27 of the Code of Civil Procedure (for short 'CPC').

2. It is settled legal position that application under Order 41 Rule 27 of CPC to lead additional evidence has to be decided along with appeal on merits. Admittedly, appeal is at the stage of final hearing.

3. The learned Single Judge of this Court in Writ Petition No.3404/2009 was considering the said issue. By relying on ratio in **State of Rajasthan Vs. T. N. Sahani & Ors.** reported in (2001) 10 SCC 619 and **Malyalam Plantations Ltd. Vs. State of Kerala & Anr.** reported in 2001 AIR SCW 264, it is held that application for additional evidence has to be considered by the appellate Court at the time of hearing of appeal on merits, so as to find out whether documents or evidence sought to be adduced have any relevance/bearing in the issues involved. This Court therefore quashed and set aside the impugned order only on the ground that said application is required to be considered at the time of hearing of appeal on merits.

4. In that view of the aforesaid legal position, the impugned order cannot be sustained. Hence, the same is hereby quashed and set aside. The matter is remanded back to the Appellate Court, which shall consider and decide application Exhibit-31 at the time of hearing of appeal on merits, within a period of eight weeks from the date of receipt of writ of this order. With these directions, writ petition is disposed of.

[NITIN B. SURYAWANSHI, J.]