

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

966 WRIT PETITION NO.7332 OF 2022

**SUDAM SAMPATRAO WAGH
VERSUS
YADAV DEVJI BHAVALE**

...
Advocate for Petitioner : Mr. Thombre Chandrakant V.
Advocate for Respondent : Mr. Mahsh K. Bhosal
...

**CORAM : MANGESH S. PATIL, J.
DATE : 14.07.2022.**

PER COURT :

Heard.

2. Issue notice to the respondent. Learned advocate Mr. Bhosale waives service on behalf of the sole respondent.
- 3 At the joint request of the parties, the matter is being disposed of finally at the stage of admission.
4. The parties are before the lower appellate court in an appeal under Section 96 of the Code of Civil Procedure.
5. The respondent who is the appellant submitted an application under Order XLI Rule 27 of the Code of Civil Procedure seeking production of additional evidence in the form of documents.
6. The lower appellate court by the order under challenge has allowed that application.
7. The parties inform that the appeal is listed for final hearing on 16.07.2022.

8. Needless to state that time and again the Supreme Court has directed that all such applications preferred under Order XLI Rule 27 of the Code of Civil Procedure should be decided along with the main appeal. Giving a complete go by to such ratio the lower appellate court has proceeded to decide the application.

9. In view of the peculiar facts and circumstance, therefore, it would be appropriate that the impugned order is quashed and set aside and the lower appellate court decides the appeal along with the application (Exh. 11) filed by the respondent.

10. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The lower appellate court shall now decide the application (Exh. 11) along with the appeal.

(MANGESH S. PATIL, J.)

mkd/-