

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

925 WRIT PETITION NO.10633 OF 2022

**SUKDEO DHADAKU MORE AND OTHERS
VERSUS
YASHWANT LATU PATIL AND OTHERS**

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Advocate for Petitioners : Mr. B.R. Waramaa
Advocate for Respondent No.2 : Mr. Prafullasing H. Patil
Advocate for Respondent No.6 : Mr. S.S. Rath h/f. Mr. G.S. Rane

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CORAM : SANDEEP V. MARNE, J.

DATE : 24-11-2022

PER COURT :

. By this petition, petitioners have assailed order dated 13.07.2022 passed by District Judge-1, Amalner thereby rejecting the appellants / petitioners application at Exh.27 for production of additional evidence.

2. On 13.10.2022 the notices were issued. Mr. Prafullasing H. Patil, the learned counsel appears on behalf of respondent no.2. Mr. S.S. Rath h/f. Mr. G.S. Rane, learned counsel appears on behalf of respondent no.6. Mr. B.R. Waramaa, the learned counsel for petitioners makes a statement that respondent nos.1, 3 and 5 have been served by paper publication by the Appellate Court and are not appearing in the appeal. Respondent no.4 has died during pendency

of the suit itself. In view thereof, it shall not be necessary to adjourn the matter any further for service of notices.

3. Mr. Waramma, the learned counsel for petitioners places reliance on the judgment of the Apex Court in **Union of India vs. Ibrahim Uddin and another**, [2012 (8) SCC 148] in which it is held as under:

“12. In Smt. Indira Kaur & Ors. v. Shri Sheo Lal Kapoor, AIR 1988 SC 1074, the lower courts drew an adverse inference against the appellant- plaintiff on the ground that the plaintiff was not ready and willing to perform his part of the contract. The question arose as to whether the party had the means to pay. The court further held that before the adverse inference is drawn against a particular party, the conduct and diligence of the other party is also to be examined. Where a person deposed that as he had deposited the money in the Bank and the other party did not even ask as on what date and in which Bank the amount had been deposited and did not remain diligent enough, the question of drawing adverse inference against such a person for not producing the Pass Book etc. cannot be drawn.”

4. Thus, the law expounded by the Apex Court about production of additional evidence before the Appellate Court appears to be that the Appellate Court can consider relevancy of such additional evidence only when the appeal is taken up for final hearing.

5. Mr. Waramma submits that the appeal is now fixed for

final hearing.

6. In that view of the matter, the order dated 13.07.2022 passed by the District Judge-1, Amalner is set aside and the appellants application at Exh.27 is restored.

7. The Appellate Court shall consider the application at Exh.27 and determine relevancy of the additional evidence when the appeal is finally heard.

8. The Appellate Court shall not be influenced by the observations made by it in the order dated 13.07.2022 or made by this Court in the present order and shall decide the application at Exh.27 on its own merits.

9. All contentions of the parties on merits are left open. Writ petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)