

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7720 OF 2013**

ASHALATA SUBHASH PATIL

..PETITIONER

VERSUS

TULSHIRAM PRALHAD MAHAJAN AND OTHERS ..RESPONDENTS

...

Ms. Seema Pawar h/f Mr. Ajay G. Talhar, Advocate
for the Petitioner.

Mr. P. S. Shindurnikar, Advocate for Respondent
Nos.1 to 3.

...

CORAM : S. V. GANGAPURWALA, J.

DATED : 14th JANUARY, 2022.

PER COURT:-

1. Heard the learned counsel for the petitioner.

2. Mr. Shendurnikar, learned counsel appears for respondent nos.1 to 3.

3. The learned counsel for respondents relies on the following judgment:

1. Shubhangi Krishna Patil Vs. Rupali Krishnant Bachhe (Patil) and Another reported in 2010 (1) Mh.L.J. 253.

4. During the pendency of Appeal, the present petitioner filed an application for producing additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. The said application is rejected.

5. I have heard learned counsel for the petitioner and the respondents.

6. It is contended by the learned counsel for respondents that, the petitioner filed an application for production of additional evidence after the matter was argued by the parties. In view of that, Court has rightly passed the order. The application for the production of additional evidence does not satisfy the test laid down under Order 41 Rule 27 of the C.P.C. The ingredients therein are not complied with. No error has been committed by the Court in rejecting the application.

7. I am not considering the merits of the contentions of the parties in the present petition. The Apex Court consistently has held that, the application for production of additional evidence in an Appeal has to be considered alongwith Appeal. Reference can be had to the judgment of the Apex Court in a case of **Mallyalam Plantation Ltd. V/s State of Kerala & Anr.** reported in 2011 AIR SCW 264 and in a case of **Union of India Vs. Ibrahim Uddin and Anr.** reported in 2013 AIR SCW 2752.

8. In light of that, the impugned order is quashed and set aside. The District Judge shall consider the application filed by the petitioner Exhibit-26 for production of the additional evidence alongwith Appeal.

9. It is made clear that, this Court has not considered the merits of contentions of the parties. The same shall be dealt with by the learned District Judge on its own merits while deciding the Appeal.

10. Writ Petition accordingly disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE

Devendra/January-2022