

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

**936 WRIT PETITION NO.11639 OF 2022**

**GANGARAM GANSHYAM RUMALE AND OTHERS  
VERSUS  
RUKHMINIBAI RAJESHWARRAO AMBATWAR  
DIED THROUGH LRS SHANKAR RAJESHWARRAO AMBATWAR**

...

Advocate for Petitioners : Mr. Anand V. Indrale Patil

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**CORAM : SANDEEP V. MARNE, J.**

**DATE : 24-11-2022**

**PER COURT :**

. In the light of the nature of the order, which I propose to pass a notice to the respondent need not be issued.

2. By this petition, petitioners have assailed order dated 12.09.2022 passed by District Judge-1, Kandhar thereby rejecting the appellants – petitioners application at Exh.29 for considering additional evidence of T.I.L.R.

3. The appeal is yet to be heard. Petitioners application for additional evidence in appeal has been rejected by order dated 12.09.2022. The Supreme Court in **Union of India Vs. Ibrahim Uddin**

**& Anr**, 2012 (8) SCC 148 has held as under:

“38. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: *Arjan Singh v. Kartar Singh & Ors.*, AIR 1951 SC 193; and *Natha Singh & Ors. v. The Financial Commissioner, Taxation, Punjab & Ors.*, AIR 1976 SC 1053).”

4. Thus, the legal position appears to be that the additional evidence sought to be produced can be considered only when the appeal is taken up for final hearing. In view of the above, the following order is passed.

**ORDER**

- (i) The order dated 12.09.2022 passed by District Judge-1, Kandhar on application at Exh.29 in R.C.A. No.39 of 2013 is set aside and the application at Exh.29 shall stand restored.
- (ii) The District Judge shall consider relevancy of the additional evidence at the time of the final hearing of the appeal.

5. The writ petition is accordingly disposed of.

( SANDEEP V. MARNE, J. )