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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 77 OF 2021**

Mohammed Irshad Abdul Haque Ansari Applicant.

V/s

Mohammad Rizwan Abdul Kader and Ors. Respondents.

Mr. Pradip J. Thorat for the Applicant.

Dr. Abhinav Chandrachud i/b Jayshree P. Manek-Thakkar for
Respondent Nos. 1 to 11.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 19, 2022

P.C.:-

1] In eviction Suit being R.A.E. Suit No.1049/1782 of 2000, decree of eviction came to be passed, which was a subject matter of challenge in Appeal No.6 of 2012 before the Small Causes Court, Bombay. In the said Appeal, application was taken out by the Applicant under Order 41 Rule 27 of the Civil Procedure Code for permission to produce additional evidence and to lead oral evidence in support thereof. The said prayer was directed to be considered vide order passed below Exhibit-21 on 4/4/2017 alongwith Appeal.

2] Appeal of the Applicant came to be decided on 17/2/2020 which is a subject matter of challenge in the present proceedings.

3] Contentions of Mr. Thorat, learned Counsel appearing for the Applicant are, order passed below Exhibit-21 on 4/4/2017 is not taken to its logical end. As such prayer of the Applicant moved under Order 41 Rule 27 ought to have been considered while deciding Appeal which has led to passing of the order impugned. As such, he would urge that impugned judgment delivered in Appeal needs to be quashed and set aside with direction to the Appellate Court to decide the said Application while deciding Appeal of the Applicant.

4] Prayer is resisted by the Counsel for the Respondent Nos. 1 to 11 as according to him, considering the nature of claim in the Application under Order 45 Rule 27, this Court in the backdrop of findings recorded by the Appellate Court can infer that the Applicant lacks bonafides in the matter of such claim of production of additional evidence at appellate stage. Apart from above, he would urge that this Court may decide Appeal on merits.

5] I have appreciated aforesaid submissions.

6] Fact remains that on record of the Appellate Court, there exists an order passed below Exhibit-21 which has been passed under the provisions of Order 41 Rule 27 of the CPC wherein directions have been issued that said Application-Exhibit-21 will be considered at the time of final hearing of the Appeal. Neither roznama nor body of the judgment delivered in Appeal speak of considering the Application-Exhibit-21.

7] Failure of the Appellate Court to consider and deal with Application-Exhibit-21 is rightly claimed to be in violation of grant of opportunity of hearing as it was expected of the Appellate Court to deal with the Application-Exhibit-21 alongwith the Appeal.

8] In this backdrop, order impugned delivered in Appeal No.6 of 2013 by the Appellate Bench of the Small Causes Court at Bombay on 17/2/2020 is hereby quashed and set aside. Said Appeal stood restored to the file of the said Court before whom parties hereto agree to appear on 1st August, 2022.

9] Appellate Court as such is directed to decide the Application-Exhibit-21 in view of order dated 4/4/2017 while deciding the Appeal. Appellate Court is directed to conclude the said proceedings in any case within a period of six months from the 1st August, 2022.

10] Petition as such stands partly allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)