

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 3102 OF 2022

Maheshkumar Morandmal Mohanani ... Petitioner
V/s.

The Commissioner,
Ulhasnagar Municipal Corporation, Thane. ... Respondent

Mr.Saurav Butala alongwith Mr.Harshad A. Sathe, Advocates for
the Petitioner.

Mr.Vijay D. Patil, Advocate for the Respondent.

**CORAM : ROHIT B. DEO, J.
DATE : JUNE 10, 2022.**

**PRIYA
RAJESH
SOPARKAR**

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by PRIYA RAJESH
SOPARKAR

Date: 2022.06.22
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P.C.:

1. The Petitioner is assailing the order of the learned Appellate Court whereby the Appellant is denied permission to produce on record additional documentary material.

2. The appeal is preferred challenging the order of the learned Trial Judge whereby injunctive relief is refused, qua apprehended action of demolition at the hands of Ulhasnagar Municipal Corporation. While the learned counsel for the Petitioner would submit that the Appellate Court have committed grave error in not exercising jurisdiction available under Order XLI Rule 27 of the CPC 1908, I find from the application moved by the Appellant-original Plaintiff that the application is signed only by the counsel and is not signed much less verified or affirmed by the Appellant.

3. The contents of the application indicate that presumably what is invoked is Rule 27(1)(aa) of the Order XLI, which would apply even to Miscellaneous Civil Appeal in view of the provisions of Order XLIII Rule 2. The said provision enables the litigant to produce additional evidence, provided it is established that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him in the original proceeding.

4. In my considered view, the application which is rejected, apart from the fact that the same is signed only by the counsel, does not make any attempt to establish the ingredients with particularity. In this view of the matter, I am not inclined to interfere with the order impugned. However, the Petitioner is at liberty to prefer an appropriate application supported by an affidavit, and if such application is moved within the next four weeks, the same shall be considered and decided by the Appellate Court within the next 15 days. Needless to observe the fresh application shall be decided on its own merits without being influenced by any observation made in the order impugned.

5. The petition is disposed of.

(ROHIT B. DEO,J.)

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