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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3590 OF 2022**

Mr. Pandurang Shankar Mhatre and Ors. Petitioners.

V/s

Mr. Makarand Shashikant Vanarse and Ors. Respondents.

Dr. Uday Warunjikar for the Petitioners.

Mr. Himanshu Kode a/w Janhavi Karnik for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 29, 2022.

P.C.:-

1] Prayer of the Respondents/Appellants for raising additional ground in appeal preferred against original decree under Order 41 is allowed vide impugned order dated 15/12/2021.

2] Counsel for the Petitioners would urge that attempt on the part of the Respondents/Appellants in moving an application below Exhibit-69 under the provisions of Order 41 Rule 2 of the Civil Procedure Code is an attempt to prolong hearing of Appeal. So as to substantiate the said claim, he would invite attention of this Court to the date of institution of the suit, date of decree and date of initiation of appeal. According to him, on perusal of grounds which are sought to be canvassed under Order 41 Rule 2, it can be very well inferred that those grounds are not germane to the cause to be decided.

3] Counsel for decree holder/Appellants would support the order

impugned.

4] Fact remains that vide order impugned Court has exercised powers under Order 41 Rule 2 of the Civil Procedure Code, permitting original Appellants to raise additional grounds other than the one which are mentioned in the Memo of Appeal by passing such order that too by putting the party to condition of payment of costs. I hardly, see any prejudice is caused to the Petitioners.

5] The order impugned is in tune with the provisions of Order 41 Rule 2 of the Civil Procedure Code. No interference is called for in the order impugned. Petition as such stands dismissed.

6] However, it is clarified that hearing of the appeal is expedited as the same is pending for more than five years.

(NITIN W. SAMBRE, J.)