

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4824 OF 2021

Atmaram S/o Namdev Tayade vs. Pooja D/o Dinkar Tayade (Minor) and
others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Tejas Deshpande, Advocate for petitioner.
Mr. K. P. Sadavarte, Advocate for respondent Nos.1 to 3.
Mr. R.N. Deshpande, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 25/03/2022

By this writ petition, the petitioner (original defendant No.3) and appellant before the Court below has challenged the order dated 16/02/2021, passed by the Court of Adhoc District Judge-1, Buldhana (hereinafter referred to as the 'appellate Court') whereby application at Exh.52 to produce additional documents, has been rejected. The appellate Court has considered the said application under Order 41 Rule 27 of the Code of Civil Procedure (CPC) and rejected the same.

2. Mr. Tejas Deshpande, learned counsel appearing for the petitioner has raised a short ground to challenge the impugned order. It is submitted that

in terms of the law laid down by the Hon'ble Supreme Court and this Court in a number of judgments, the stage for consideration of such an application under Order 41 Rule 27 of the CPC is the stage of final hearing of the appeal. The application could not have been considered and decided at a stage prior to the final hearing and decision of the appeal.

3. Reliance is placed on judgments of the Hon'ble Supreme Court in the case of *Union of India and another vs. Ibrahim Uddin and another (2012) 8 Supreme Court Cases 148, State of Rajasthan vs. T.N.Sahani and others (2001) 10 Supreme Court Cases 619*, as also judgment of this Court in the case of *Maria Felicidade Amaltina Mascarenhas and others vs. Joao Francisco Serrao alias John Francisco Serrao and another 2021(6)Mh.L.J.324*.

4. On the other hand, Mr. Sadavarte, learned counsel appearing for the contesting respondent submits that the petitioner had utterly failed to make out a case for producing additional documents under Order 41 Rule 27 of the CPC and that therefore, the appellate Court was justified in rejecting the application.

5. He has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Y.P.Sudhanva Reddy and others vs. Chairman and Managing Director Karnataka Milk Federation and others, 2019(1) Mh.L.J. 486***, to contend that the applicant in such an application must satisfy the requirement under Order 41 Rule 27 of the CPC.

6. Mr. R. N. Deshpande, has appeared on behalf of the respondent No.4, which is a formal party.

7. In view of the position of law laid down and clarified by the Hon'ble Supreme Court repeatedly and followed by this Court, it is clear that an application under Order 41 Rule 27 of the CPC is to be considered at the time of hearing of the appeal on merits. This is specifically stated in the judgments of the Hon'ble Supreme Court in the cases of *Union of India vs. Ibrahim* (supra) and *State of Rajasthan vs. T.N.Sahani* (supra). In fact, in the case of *Maria* (supra) this Court set aside an order passed on an application under Order 41 Rule 27(b) of the CPC, which specifically states that the documents sought to be produced must be found by the appellate Court as documents required to enable it to pronounce judgment. It is obvious that such a consideration can

be undertaken only at the stage of hearing of the appeal on merits.

8. In the instant case, admittedly the impugned order rejecting the application filed by the petitioner was passed independently and before considering the appeal on merits. Hence, on this short ground, the impugned order deserves to be set aside.

9. It is made clear that this Court is not commenting on the merits of the application at Exh.52. That would be a consideration to be undertaken by the appellate Court at the stage of final hearing of the appeal.

10. Accordingly, the writ petition is allowed. The impugned order is set aside. Consequently, the application at Exh.52 stands revived for consideration of the appellate Court at the stage of final hearing of the appeal.

11. It is made clear that this Court has not commented either way on the merits of the aforesaid application at Exh.52.

JUDGE