

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

WRIT PETITION NO. 3702 OF 2021

Hariom Kashmirilal Batra and anr.

Vs.

Kumar Prashant Narayan Bhagat and anr.

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

Court's or Judge's Orders.

Mr. Abdul Subhan, Advocate for petitioners.
Mr. M.R. Joharapurkar, Advocate for respondent No.1.
Mr. S.M. Khan, Advocate for respondent No.2.

CORAM : MANISH PITALE J.

DATE : 25.04.2022.

By this writ petition, the petitioners have challenged order dated 18.08.2021 passed by the Court of District Judge-2, Hinganghat, Dist. Wardha (hereinafter referred to as 'the appellate Court') whereby an application at Exhibit 14 filed on behalf of the petitioners i.e. original defendants under Order 41 Rule 27 of the Code of Civil Procedure (CPC) stood rejected.

2. By the aforesaid application an attempt was being made to place on record additional documents which according to the petitioners were

relevant and necessary for the appellate Court to render its decision in the matter. The appellate Court considered the application and rejected the same.

3. Mr. Abdul Shubhan, learned counsel appearing for the petitioners submitted that the appellate Court erred in exercising jurisdiction under Order 41 Rule 27 of the CPC, in view of the settled position of law laid down by the Hon'ble Supreme Court in various judgments including judgments in the cases of *Union of India Vs. Ibrahim Uddin and another, 2012 (8) SCC 148* and *State of Rajasthan Vs. T.N. Sahani and Ors., 2001 (10) SCC 619*. By relying upon the said judgments, it was submitted that the application filed by the petitioners could have been heard and decided only while hearing the appeal finally.

4. On the other hand, Mr. Joharapurkar, learned counsel appearing for the respondents submitted that there could be no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the aforesaid judgments. It was submitted the impugned order was, in fact, in tune with the said position of law, because the appeal filed by the petitioners was indeed being heard finally when the said application was placed on record and it was at

that stage that the appellate Court considered the same and came to a conclusion that the said documents sought to be placed on record were not necessary for the appellate Court to pronounce judgment in the matter. On this basis, it was submitted that the writ petition deserved to be dismissed.

5. This Court has considered the impugned order. It is clear from the contents of the same, particularly paragraph 14 thereof, that the application was considered at the stage of final hearing of the pending appeal before the appellate Court. The material placed on record on behalf of the respondents shows that it was when the respondent before this Court, who is also respondent before the appellate Court was being heard in the matter through Advocate, during the course of final hearing, that the said application under Order 41 Rule 27 of the CPC was filed and came up for consideration.

6. In other words, the arguments on behalf of the petitioners i.e. original appellants before the appellate Court were already over during the course of final hearing of the appeal and the Advocate for the respondents was being heard. It is at this stage of final hearing that the application came to be moved,

which the appellate Court considered and found that the additional documents sought to be placed on record Order 41 Rule 27 of the CPC were not necessary for the appellate Court to render or pronounce judgment in the matter.

7. Considering the facts of the present case, this Court is of the opinion that the law laid down by the Hon'ble Supreme Court in the aforementioned judgments *Union of India Vs. Ibrahim Uddin* and *State of Rajasthan Vs. T.N. Sahani* (supra) has been followed. It is laid down in the said judgments that an application under Order 41 Rule 27 of the CPC is to be considered by the appellate Court at the stage of hearing of the appeal on merits, so as to reach a conclusion, as to whether the same ought to be allowed to enable it to pronounce judgment. The appellate Court in the present case considered the application filed by the petitioners at the stage of final hearing of the appeal on merits and therefore, there is no procedural infirmity in the approach adopted by the appellate Court.

8. In view of the above, the writ petition is dismissed.

9. The petitioners would be at liberty to raise grounds concerning the aforesaid documents, if occasion arises for them to file a further appeal to challenge the judgment of the appellate Court.

JUDGE

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