

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.847 OF 2023
IN SA/29/2023**

**SHRIPAD GOPALRAO PATHAK
VERSUS
VARSHA SHRIPAD PATHAK**

...
Advocate for Applicant : Mr. S.A. Ambad
...

CORAM : S. G. MEHARE, J.

DATE : 28.11.2023

PER COURT :

1. Heard the learned counsel for the applicant.
2. The notice was duly served upon the respondent but she did not appear. This is Civil Application for leave to adduce additional documentary evidence in pursuance of the legal notice dated 02.04.2015.
3. The learned counsel for the applicant would submit that the notice dated 2.4.2015 issued by the respondent was not on the record. In the said notice she contended that she was not ready and willing to join the company of the applicant/appellant. However, this notice was

not produced on record, therefore, the application deserves to be allowed.

4. The Court questioned whether the fact of denial to join the company was suggested to the respondent before the Court of first instance, the learned counsel for the applicant states that the respondent admitted this fact. It appears from his argument that there was no dispute about the notice dated 02.04.2015. The fact which the appellant wanted to bring on record by way of additional evidence was already on record. Allowing the parties to produce the additional evidence is not a course of routine. The party wishes to produce additional evidence in Appellate Court has to satisfy the requirements provided under Order XLI Rule 27 of the Code of Civil Procedure. It is not the case of the applicant that even after exercise of due diligence, he could not produce the notice dated 02.04.2015. It is also not the case that it was not within his knowledge. The notice was admittedly served upon the applicant. So, it could safely be inferred that it was within his knowledge. None of the conditions laid down under Order XLI Rule 27 of the Code of Civil Procedure appear to have been complied with.

5. This is not a fit case to allow the application under Order XLI Rule 27 of the Code of Civil Procedure. Hence, Civil Application stands dismissed.
6. List the Second Appeal on 08.10.2024.

(S. G. MEHARE)
JUDGE

ysk