

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

2 WRIT PETITION NO.14302 OF 2019

**SADGURUNATH BHAGWANTH JOGI
THROUGH LRS LATABAI SADGURUNATH JOGI UBALE AND OTHERS
VERSUS
PHULABAI VIJAYKUMAR MITKARI AND OTHERS**

...

Advocate for Petitioners : Mr. Ravibhushan P. Adgaonkar
AGP for Respondent – State : Mr. S.S. Dande
Advocate for Respondent Nos.2 to 4 : Mr. V.V. Bhavthankar
Advocate for Respondent No.5 : Mr. G.L. Deshpande

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 24-02-2023

PER COURT :

. Heard.

2. By this petition the challenge is to the order dated 17.10.2019 passed in Regular Civil Appeal No.242 of 2013 rejecting the petitioners application filed under Order-XLI, Rule-27 of the Code of Civil Procedure, 1908 (in short, 'CPC').

3. The learned counsel appearing for the petitioners has invited the attention of this Court to the order dated 27.11.2019 passed by this Court in which this Court has held that Exh.40 i.e. the application under Order-XLI, Rule-27 of the CPC should have been considered by the Appellate Court along with the main appeal by placing reliance on decisions of the Apex Court. This Court has noted

in the order that the correct law was not cited before the Appellate Court and the Appellate Court is at liberty to decide the said appeal on its own merits and also consider Exh.40 along with the said appeal. The learned counsel for the petitioners has placed reliance on the decision of the Apex Court in the case of **Union of India vs. Ibrahim Uddin & Anr, 2012 (8) SCC 148** to substantiate his contention that the application under Order-XLI, Rule-27 of the CPC is required to be considered along with the appeal.

4. The learned counsel appearing for the respondents has emphasized that the application itself was not maintainable and has invited the attention of this Court to the observations in paragraph nos.2 and 3 wherein the Court has held that the original document was already on record. The relief sought does not attract the provisions of Order-XLI, Rule-27 of the CPC.

5. Considered the submissions.

6. This Court by order dated 27.11.2019 has already held that the application should have been considered by the Appellate Court along with the main appeal and the said order is not challenged or modified till date. The contention of the learned counsel for the respondents that the application itself is not

maintainable as found by the Appellate Court cannot be considered by this court at this stage especially considering the decision of the Apex Court in the case of **Union of India** (*supra*).

7. All contentions as regards the maintainability and on merits are expressly kept open to be agitated before the Appellate Court.

8. The Appellate Court to hear the application below Exh.40 along with the appeal at the time of final hearing.

9. For the reasons above, the writ petition stands disposed of.

10. As the appeal is of the year 2013, the Appellate Court is requested to decide the appeal within a period of three months from today.

(**SHARMILA U. DESHMUKH, J.**)