

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

**WRIT PETITION NO.799 OF 2020**

Sidharth Pannalal Kankriya

.... Petitioner

Versus

Prakash Ramrao Kalyankar

.... Respondent

.....

Mr. Avinash Patil Barhate, Advocate h/f Mr. Shailesh S. Chapalgaonkar, Advocate for the Petitioner

Mr. Milind M. Patil (Beedkar), Advocate for the Respondent

.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 13<sup>th</sup> JUNE, 2023**

**ORDER :**

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner challenges the common order passed by the learned District Judge-2, Parbhani, below Exhibits-27 and 31 in Regular Civil Appeal No.38 of 2013.

2. The petitioner is the original plaintiff/landlord and the respondent is original defendant/tenant. Suit is filed by the plaintiff for recovery of possession of the suit shop by evicting the defendant/tenant. The Trial Court after recording evidence of the parties, decreed the Suit and directed the defendant/tenant to deliver possession of suit premises to the plaintiff/landlord. The defendant/tenant challenged the

decision of the Trial Court by filing Regular Civil Appeal No. 38 of 2013. During the pendency of the appeal, the defendant/tenant filed application Exhibit-27 under Order XLI Order 27 read with Section 151 of the Code of Civil Procedure, for permission to lead additional evidence. By filing application Exhibit-31, the defendant/tenant sought permission of the Appellate Court to produce certain documents to be considered at the time of final decision of the Appeal. By common order impugned in the present petition, both the applications are allowed. Hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto and the impugned order.

4. Though both the learned advocates addressed on the merits of the matter, this Court, at this stage, is not inclined to enter into the merits of rival submissions. It is informed at the bar that the Appeal is posted for final hearing on 23/06/2023.

5. In view of the settled legal position that application for leading additional evidence in Appeal has to be considered and decided at the time of final adjudication of the Appeal, the impugned common order passed by the Trial Court is

unsustainable in law and facts of the case, and deserves to be quashed and set aside. The impugned order also does not give proper reasons while allowing the applications below Exhibits 27 and 31 filed by the defendant/tenant.

6. In the result, the writ petition is allowed.

7. Impugned common order dated 10/10/2019 passed by learned District Judge-2, Parbhani, below Exhibits-27 and 31 in Regular Civil Appeal No.38 of 2013 is hereby quashed and set aside.

8. The matter is remitted back to the Appellate Court. The Appellate Court shall decide applications below Exhibits 27 and 31 on merit, at the time of final adjudication of Regular Civil Appeal No.38 of 2013, without being influenced by order impugned in this writ petition.

**[ NITIN B. SURYAWANSHI ]**  
**JUDGE**

S.P. Rane