

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 526 OF 2023

Rangrao Yashwant Patil

.. Petitioner

Versus

~~Govind Dinkar Kumbhojkar~~

(since deceased) through legal heirs

Hemlata @ Tara Prabhakar Kulkarni & Ors.

.. Respondents

-
- Mr. Drupad Sopan Patil for Petitioner
 - Mr. Sandeep Koregave for Respondents
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 20, 2023

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner and Mr. Koregave, learned Advocate for Respondent No. 2.

2. Perused the impugned order dated 29.09.2022 passed by the Appellate Court below Exh. 26 and Exh. 43 in RCA No. 25 of 2015. The Applications were filed by the Petitioner (original Appellant) seeking permission to file documents at Sr. Nos. 3 and 5 to 30 as per the list attached to the Applications. The suit filed by the Petitioner was for specific performance of contract and the same came to be dismissed. Admittedly, the Judgment of Trial Court records that possession of the suit land is with the Defendants. Substantive Appeal has been filed by the Petitioner. Petitioner filed Applications before the Appellate Court seeking to produce on record the documentary

evidence in the nature of receipts issued by the sugarcane factory in respect of sugarcane having been taken from the custody and possession of Petitioner. Learned Appellate Court has considered the Applications in the light of the provisions of Order 41, Rule 27 of CPC. Out of the documents sought to be produced on record, some are public documents and other are receipts. After recording the submissions of the parties, learned Appellate Court has in paragraph No. 5 enumerated the nature of the documents.

3. Mr. Patil, learned Advocate for Petitioner would submit that the said documents became available to the Petitioner after decretal of the suit in the year 2014. The learned Appellate Court has rejected the Applications after going into the merits of some of the documents. Mr. Patil would contend that in view of the decision in the case of **Vamneshwar Saunsthan Vs. Gajanan Babuso Sattarkar & Ors.**¹, the issue relating to considering Applications filed under Order 6, Rule 17 of CPA and / or for that matter under Order 41, Rule 27 of CPC for considering the effect of documents will have to be relegated at the time of final hearing of the Appeal so as to enable the Court to come to the conclusion whether the additional evidence sought to be relied upon by the Appellant is necessary and germane to be taken into account to pronounce the judgment or for any other substantial cause. He submitted that this approach is consistent with the decision of the

¹ 2022(2) Mh.L.J. 56

Supreme Court in the case of **Union of India Vs. Ibrahim Uddin**²

4. PER CONTRA, Mr. Koregave, learned Advocate for Respondents has declined to file affidavit-in-reply and proceeded with the matter and argued that the Applications made under Exh. 26 and 43 by the Petitioner before the Appellate Court have been duly considered and the learned Appellate Court has expressed its satisfaction in so many words and rejected the same on merits. That apart, he would submit that the twin Applications made by the Petitioner were only to fill in lacuna considering that the learned Trial Court has decreed the suit in favour of the Respondents.

5. Mr. Koregave sought to refer to rely upon the decision in the case of **Ibrahim Uddin** (*second supra*) as also the unreported decision passed by the learned Single Judge of this Court in the case of **Yesa @ Yashwant Sabhana Patil & Ors. Vs. Dnyandev Pandurang Padwal & Ors.**³ and contended that Petitioner has made out no case whatsoever for production of the additional evidence on the basis of the application of tests laid down in application to the facts of the Petitioner's case. He submitted that the discretion of the Court in allowing any Application under Order 41, Rule 27 of CPC is to be used sparingly and it needs to be considered as to whether the party making such an Application had ample opportunity to produce the said

² 2012(5) All MR 462 (SC)

³ Order dated 30.11.2016 in WP No. 1528 of 2016

evidence before the trial Court and he had in fact failed to do so or elected not to do so and in that view of the matter, the impugned order passed by the learned Appellate court is correct in law.

6. I have considered the submissions advanced by both the learned Advocates as also the decision of the Supreme Court in the case of **Ibrahim Uddin** (*second supra*) which governs the field.

Paragraph No. 36 of the said decision reads thus:-

“36. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.”

7. It is undoubtedly true that the Application filed at much belated stage cannot be filed as a matter of right and the Court will have to consider any such application that is filed with circumspection. In the present case, it is seen that the Appellate Court ought to have exercised its discretion by judicially taking into account the nature of the documents which were sought to be produced by Petitioner. It is seen that the additional documents in fact pertain to public documents as also the receipts issued by the sugarcane factory. Considering that the documents which are sought to be relied upon by Petitioner are not only germane for adjudication of the *lis* between the parties but may also be relevant, the discretion exercised by the learned Appellate Court in my respectful analysis is not in consonance with the tests laid down for determining the Application under Order 41 Rule 27 of CPC.

Needless to state that the objections raised by Mr. Koregave will have to be considered by the learned Appellate Court when the Appellate Court hears the twin applications below Exh. 26 and 43 filed by the Petitioner at the time of final hearing of the Appeal in accordance with law.

8. In view of the above observations and findings, the impugned order dated 29.09.2022 is quashed and set aside. The objections raised by Mr. Koregave are expressly kept open to be raised before the learned Appellate Court at the time of final hearing of the Appeal. It is directed that the Applications below Exh. 26 and 43 shall be heard by the learned Appellate Court along with final hearing of the Appeal strictly in accordance with law and on the merits of the matter without being influenced by this order.

9. At the request of Mr. Koregave, considering that the original suit was filed in the year 1996 and it was decreed in favour of Respondents in 2014, the learned Appellate Court is requested to determine the hearing of the Appeal as also the twin Applications below Exh. 26 and 43 within a period of three months from today.

10. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
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