

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10650 OF 2023

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2023.12.19
18:17:29 +0530

Madhukar Damodar Zemse & Anr. ... Petitioners

V/s.

Tejas Surendra Khandar & Ors. ... Respondents

Ms. Nishtha Garg i/by Ms. Prajakta Kadu for the
petitioners.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 19, 2023

P.C.:

1. By the impugned order, the Appellate Court rejected application under Order 41 Rule 27 of the Code of Civil Procedure, 1908.
2. In view of the law laid down by the Apex Court in **Union of India v. Ibrahim Uddin & Ors.** reported in (2012) 8 SCC 148, the Lower Appellate Court is enjoined to decide such application at the time of hearing of the appeal.
3. Hence, the impugned order is quashed and set aside. However, the Appellate Court shall decide the application under Order 41 Rule 27 of the Code of Civil Procedure, 1908.
4. With this clarification, the writ petition stands disposed of.
No costs.

(AMIT BORKAR, J.)