

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13829 OF 2022

Rakhamabai Dhansing Patil (Rajput)

.. Petitioner

Versus

Bapu Pratap Patil and Ors.

.. Respondents

-
• Mr. Jayendra D. Khairnar for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2023

P.C.:

- 1.** Heard Mr. Khairnar, learned Advocate for Petitioner.
- 2.** The present Writ Petition takes exception to the order dated 08.11.2022 passed below Exh.21. The Application below Exh.21 has been filed in Civil Appeal No.109 of 2013 in the year 2022. The Application seeks production of additional evidence by the Appellant (Petitioner herein) who was the Plaintiff in original Regular Civil Suit No.49 of 2005 which came to be decreed on 11.10.2013.
- 3.** Mr. Khairnar would submit that the Appellant was not a party to the original Suit. However, considering that the Appellant would be affected by virtue of the original decree the Appellant filed the Civil Appeal since the original decree was concerned with partition of ancestral suit properties between the family members. He would submit that the decree passed in the original suit was by virtue of a compromise arrived at between the parties to the suit.

4. Record indicates that the Application was filed by the Appellant not alongwith filing of the Civil Appeal but after almost 9 years after filing of the Civil Appeal. The Application was to the effect that the Appellant desired to refer to and rely upon certain documents which were certified copies of Court proceedings and orders passed by the Court. The learned Appellate Court examined the Application filed by the Appellant under the provisions of Order XLI of Rule 27 of Civil Procedure Code, 1908 (for short '**CPC**') and returned the findings that the Application was filed on the basis of non-availability of the documents with the Appellant. Learned Appellate Court held that this could never have been the ground since the documents sought to be referred to and relied upon were certified copies of Court record and were documents available in the public domain and could have been obtained by the Petitioner upon gathering about the knowledge of the said documents. That apart, the Petitioner also did not provide any reason whatsoever with respect to the exercise of due diligence by the Petitioner to obtain the said documents which according to the Petitioner were not to his knowledge.

5. The provisions of Order XLI Rule 27 refer to production of additional evidence in the Appellate Court and allows a party to produce additional evidence only under the three exceptions carved out thereunder. The case of the Petitioner is covered under amended

clause (aa) of the aforesaid provisions which reads thus:-

“(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or”

6. Mr. Khairnar would submit that apart from clause (aa), the provisions of clause (b) would also apply to the present case namely that examination of the said documents would enable the Appellate Court to pronounce its judgment more effectively. He had also referred to and relied upon the decision of the Supreme Court in the case of ***Union of India V/s. Ibrahim Uddin and Another***¹ and drawn my attention to the paragraph Nos.48 and 49 which read thus:-

“48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.

49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the

issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide Arjan Singh v. Kartar Singh and Natha Singh v. Financial Commr., Taxation.)”

7. It is seen that in the first place the Application for seeking the amendment to produce the additional documents has been filed by the Petitioner at a much belated stage of the proceedings. The Appeal was filed in the year 2013 whereas the Application has been moved in the year 2022.

8. In that view of the matter, the learned Appellate Court has not only considered the Application, but has also verified the Application in order to see whether there has been a proper exercise of due diligence by the Petitioner which has not been seen. That apart, the only reason advanced by the Petitioner in the Application that the subject documents were not available to the Petitioner has been held to be incorrect. Since the subject documents were certified copies of Court record and Petitioner could have obtained them with due diligence, in that view, provisions of the Order XLI Rule 27 (aa) are not complied with and the learned Trial Court has after assigning cogent reasons used its discretion by exercising judicial caution and

dismissed the Application.

9. I do not find any reason to interfere with the reasons given by the learned Appellate Court. Though, Mr. Khairnar would submit that it is necessary for the Trial Court, the learned Appellate Court or this Court to examine the document to understand the veracity of the same, however considering the gross delay and laches and the Application of the Petitioner not confining to the parameters of Order XLI Rule 27 (aa), I do not agree with the proposition advanced by Mr. Khairnar calling upon the Court to examine the said documents in this Writ Petition. The order passed by the learned Appellate Court below Exh.21 does not call for any interference and is sustained.

10. The learned Appellate Court is directed to dispose of Civil Appeal No.109 of 2013 within a period of six weeks from today on its own merits.

11. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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