

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5771 OF 2016

Natwarlal Radhakisan Ladda

}*Petitioner*
(*Orig. Plaintiff*)

: *Versus* :

1. Rajendra Bapusaheb Pachore

(since deceased, hence through Legal Heirs)

and Ors.

}....*Respondents*
(*Orig. Defendants*)

Mr. Umesh R. Mankapure, for the Petitioner.

Mr. Sarthak S. Diwan i/by. Mr. Ashutosh M. Kulkarni, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 10 July 2024.

P.C. :

1) The challenge in the present petition is to the order dated 27 January 2016 passed by the District Judge-5, Sangli by which the applications filed by the Respondents-Defendants for production of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure (**Code**), are allowed. The decree of the Trial Court is set aside and the suit is remanded by granting liberty to the Defendants to amend their Written Statement. Leave is granted to Plaintiff also to amend the plaint.

2) The issue that is sought to be raised by the Petitioner is about permissibility for the Appellate Court to set aside the entire decree while deciding the application under Order 41 Rule 27 of the Code. It is contended by the Petitioner that if the Appellate Court desired finding of the Trial Court on any particular issue after permitting Defendants to lead additional evidence, the remand ought to have been only to the extent of inviting findings on those issues and it was not necessary to set aside the entire decree.

3) I have heard Mr. Mankapure, the learned counsel appearing for the Petitioner and Mr. Diwan, the learned counsel appearing for the Respondent.

4) Perusal of the application filed by the Defendants to lead additional evidence before the District Court would indicate that Defendants wanted to prove availability of additional premises with the Plaintiffs in the structure in which the suit premises were located. However, today factual position appears to be that the entire structure in which the suit premises are located is demolished by the Municipal Corporation. Thus alleged availability of additional premises for Plaintiff which was sought to be proved by the Defendants by leading additional evidence may not survive. In my view, the District Court needs to take note of the subsequent event of demolition of the entire structure and then decide the application for production of additional evidence filed by the Defendants. For that purpose, the impugned order passed by the District Court is required to be set aside so that the District Court would be in a position to decide the applications at Exhibits-57 and 59, afresh.

5) At this stage, Mr. Diwan would submit that instead of amending the applications at Exhibits-57 and 59, the Defendants be permitted to withdraw those applications with liberty to file fresh applications under Order 41 Rule 27 of the Code to bring on record subsequent events as well. Mr. Mankapure is agreeable to this arrangement.

6) Accordingly, the judgment and order dated 27 January 2016 passed by the District Court, Sangli in Regular Civil Appeal No. 197 of 2010 is set aside. Regular Civil Appeal No. 197 of 2010 is restored on the file of the District Judge-5, Sangli.

7) The Defendants are permitted to withdraw the applications at Exhibits-57 and 59 and shall be at liberty to file fresh applications for production of additional evidence under Order 41 Rule 27 of the Code. Such applications, if and when filed, shall be decided by the Appellate Court on its own merits without being influenced by any observations made in the order dated 27 January 2016 or in the present order.

8) All points raised by the parties on merits of the Appeal are specifically kept open. With the above directions, the Writ Petition is **disposed of**.

9) With disposal of the Writ Petition, nothing would survive in the Interim Application. The Interim Application also stands disposed of.

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[SANDEEP V. MARNE, J.]