

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13059 OF 2018

Manjunath Tukoba Revankar

..... Petitioner

VERSUS

Hargunsingh Khotaingh Labana

..... Respondent

Mr.Virendra Pethe for the Petitioner.

None for the Respondent.

CORAM: RAJESH S. PATIL, J.

DATE : 11 MARCH, 2024

P.C. :-

The petitioner is the original owner who had filed R.C.S. No. 287 of 1993 for eviction of the tenant on the grounds of 'arrears of rent'. The said suit filed by the petitioner was dismissed. An appeal against the dismissal of the suit was filed before the District Court, Kalyan. During the pendency of the appeal, the petitioner preferred an application (Ex.14) under Order 41 Rule 27 of the Code of Civil Procedure, 1908.

2. The said application preferred by the petitioner under Order 41 Rule 27 was heard and decided by the District Court by its order dated 2 July, 2018, thereby rejecting the application (Ex.14) filed by the petitioner (original plaintiff).

3. It is submissions of Mr.Pethe, learned counsel for the petitioner that such an order could have never been passed by the District Court during the pendency of the appeal. He submits that the said application should have been heard and disposed of along with main appeal.

4. He referred to the judgment of the Supreme Court passed in the proceedings of *Union of India vs. Ibrahim Uddin and Another*, reported in *(2012) 8 SCC 148*. He referred to paragraph no.52 of the said judgment. He also referred to the judgment of this Court in the proceedings of *Vameshwar Saunsthan vs. Gajanan Babuso Sattarker & Ors.*, reported in *2022(2) Mh.L.J. 56*. He submitted that hence, the matter requires to be remanded back

with this Court setting aside the impugned judgment and order and directing the Appellate Court to re-hear the Application (Ex.14) filed under Order 41 Rule 27 with the main appeal. He submits that the respondents have been served and affidavit of service to that effect has already been filed before this Court.

5. I have heard Mr.Pethe in this matter and have gone through the documents on record. None appears for the respondent though served.

6. Supreme Court in the judgment of ***Union of India vs. Ibrahim Uddin and Another*** (supra) has held that an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 cannot be decided prior to the hearing of the appeal. It is further held that the said application has to be heard along with the main application. Paragraph 52 of the said judgment reads as under :-

52. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time

of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.

[Emphasis supplied]

7. In the judgment of this Court in ***Vameshwar Saunsthan*** (supra) this Court has remanded the matter back to the Appellate Court by directing the Appellate Court to hear the application under Order 41 Rule 27 along with the appeal.

8. In view of the law laid down by the Supreme Court, this writ petition is required to be allowed.

9. The impugned judgment and order dated 2 July, 2018 is quashed and set aside.

10. Application Ex.14 filed before the District Court is taken back to the file and the same be decided at the stage of hearing of the Civil Appeal No. 175 of 2012.

11. Writ petition is accordingly stands allowed.

[RAJESH S. PATIL, J.]