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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.581 OF 2018

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Mrs.Nafis S. Setranjiwala & Ors. ..Applicants

V/s.

Mr.S.K. Solomon, since deceased
through His L.Rs. - Manoj Chakranarayan & Ors. ..Respondents

Mr.Pradeep J. Thorat with Mr.Aniesh Jadhav and Ms.Aditi Naikare for the Applicants.

Mr.Kiran Gandhi with Mr.Aakash Kothari i/b Little & Co. for Respondent Nos.31, 35, 36 and 37.

CORAM : RAJESH S. PATIL, J.

DATE : 29TH JANUARY, 2024.

P.C. :-

1. Both the counsel appearing for the parties state that Appeal No.400 of 2009 was decided by the Appellate Bench of the Court of Small Causes, Mumbai, by its judgment and order dated 4 May 2018, thereby dismissing the Appeal. They further submit that by an order dated 3 April 2017, the application made by the Appellants under the provisions of Order XLI Rule

27 of the Code of Civil Procedure was to be heard and disposed of along with Appeal No.400 of 2019.

2. I pause to observe from the impugned order dated 4 May 2018, the Appellate Bench of the Court of Small Causes, Mumbai has not dealt with the application of the Appellants preferred under Order XLI Rule 27 of the Code of Civil Procedure.

3. Mr.Thorat, advocate appearing for the Applicants has cited one judgment of the Supreme Court in the matter of *Malayalam Plantations Limited vs. State of Kerala & Anr.* reported in *(2010) 13 SCC 487*. Mr.Thorat has relied upon paragraphs 15 to 19 of the said judgment. The said paragraphs No.15 to 19 read as under :-

“15. In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in *Jatinder Singh v. Mehar Singh (2009) 17 SCC 465* and *Shyam Gopal Bindal v. Land Acquisition Officers (2010) 2 SCC 316*.

16. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the

part of the appellate court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing on the issues involved. It is trite to observe that under Order 41 Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the appellate court to pronounce the judgment or any other substantial cause of similar nature.

17. It is equally well settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case. Adducing additional evidence is in the interest of justice. Evidence relating to subsequent happenings or events which are relevant for disposal of the appeal, however, it is not open to any party, at the stage of appeal, to make fresh allegations and call upon the other side to admit or deny the same. Any such attempt is contrary to the requirements of Order 41 Rule 27 CPC. Additional evidence cannot be permitted at the appellate stage in order to enable other party to remove certain lacunae present in that case.

18. In the light of the separate application filed under Order 41 Rule 27 CPC for reception of additional evidence by both

sides, it is for the High Court to consider and take a decision one way or the other as to the applicability of the same and decide the appeal with reference to the said conclusion. In this view of the matter, we refrain from going into the merits of the materials placed by both sides and it is for the High Court to consider and take a decision one way or the other as per the mandate of the said provision.

19. For the reasons aforesaid, the impugned judgment of the High Court is set aside. We make it clear that we have not gone into the merits as to whether application for reception of additional evidence under Order 41 Rule 27 CPC should be allowed or not, which shall be decided by the High Court in accordance with law. We also make it clear that we have not gone into the merits of the claim made by both parties except the reasons indicated in the earlier paragraphs.”

4. Considering the present proceedings in the light of findings of Supreme Court in the judgment of **Malayalam Plantations Limited** (supra) the judgment and order passed by the Appellate Bench of the Court of Small Causes, Mumbai in Appeal No.400 of 2019 passed on 4 May 2018 is quashed and set aside to the limited extent that the Appellate Bench of the Court of Small Causes, Mumbai to consider the application of the Appellants preferred under the provisions of Order XLI Rule 27

of the Code of Civil Procedure within a period of four weeks from today and decide the same on its merit, the said Appeal be accordingly heard and disposed of within the said period.

5. All parties to act on the authenticated copy of this order.

(RAJESH S. PATIL, J.)