



1071-2023

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1071 OF 2023

(Gousiya Labour Co-operative Housing Society Ltd., Nagpur, through its President Vs. Shri Faizal Muzahidul Aziz s/o Abdul Aziz & Ors.)

WITH WRIT PETITION NO. 1079 OF 2023

(Gousiya Labour Co-operative Housing Society Ltd., Nagpur, through its President Vs. Shri Shri Munirul Aziz s/o Abdul Aziz & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.L. Khapre, Senior Counsel with Shri A.J. Mirza,
Counsel for the petitioner.

Shri S.D. Khati, Counsel for respondent no.1 in WP
1071/2023 and for respondent nos. 1 and 2 in WP
1079/2023.

Ms S.N. Thakur, A.G.P. for the respondent/State.

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CORAM : ANIL L. PANSARE, J.
OCTOBER 3, 2024

The question involved in the petitions is no more *res integra*. The First Appellate Court has decided the application filed by the petitioner – original appellant under Order XLI Rule 27 of the Code of Civil Procedure, 1908, not at the time of final hearing, but pending appeal, upon the insistence of the appellant.

2] The Hon'ble Supreme Court, in the case of *G. Shashikala (Died) Through Legal Representatives Vs. G. Kalawati Bai (Died) Through Legal Representatives And Others [(2019) 15 SCC 201]*, has, on this point, held as under :

“6. By order dated 11-7-2016, the High Court allowed the application filed by the respondents (IA No. 428 of 2011) and also admitted the documents in evidence and directed that the impact of the additional evidence admitted in evidence will be examined while hearing the main appeal. So far as IA No. 5 of 2011 filed by

the appellants is concerned, no order was passed.

10. In our considered opinion, the need to remand the case to the High Court has occasioned for the reason that the High Court committed jurisdictional error while deciding the application filed by the respondents under Order 41 Rule 27 of the Code (428 of 2011) separately.

11. The question as to how the application filed under Order 41 Rule 27 of the Code in the appeal should be decided by the appellate court remains no more res integra and stands decided by the three decisions of this Court in North Eastern Railway Admn. v. Bhagwan Das (2008) 8 SCC 511 (see paras 13-17), Shalimar Chemical Works Ltd. v. Surendra Oil & Dal Mills (2010) 8 SCC 423 (see para 16) and Corpn. Of Madras v. M. Parthasarathy (2018) 9 SCC 445 (see paras 11-15).

12. Unfortunately, the High Court while deciding the application (428 of 2011) filed by the respondents under Order 41 Rule 27 of the Code did not notice the law laid down in the aforementioned three decisions and proceeded to decide the application/appeals and thus committed a jurisdictional error.”

2] Accordingly, orders dated 15/11/2022 passed below Exh. 15 by the Adhoc District Judge – 2, Nagpur, in Regular Civil Appeal Nos. 155/2018 and 156/2018, are quashed and set aside. Both civil applications (Exh. 15) are restored on file of the First Appellate Court, who shall proceed to consider the same in terms of the judgment cited above.

3] The writ petitions are disposed of in above terms.

(ANIL L. PANSARE, J.)

Sumit