



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2330 OF 2024

Gangadhar S/o Vishwasrao Tembhekar Vs. Gram Panchayat, Datewadi, Tah.
Narkhed, Dist. Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.S. Shukla, Advocate for petitioner.
Mr. R.S. Jadhav, Advocate for respondent/State.

CORAM : N.R. BORKAR, J.

DATE : 16.08.2024.

This petition takes exception to the order dated 31.01.2024 passed by learned Ad-hoc District Judge – 6, Nagpur, below Exh. 15 in Regular Civil Appeal No.175/2020.

2. The petitioner herein has filed the above appeal against the judgment and decree passed by the trial Court.

3. By the order impugned, the learned first appellate Court has rejected the application (Exhibit 15) filed by the petitioner under Order 41 Rule 27 of the Code of Civil Procedure.

4. I have heard the learned counsel for the petitioner and learned counsel for the respondent.

5. Learned counsel for the petitioner submits that in view of judgment of Hon'ble Supreme Court in the case of ***State of Rajasthan Vs. T.N. Sahani***, reported in ***2001 (10) SCC 619***, the application under Order 41 Rule 27 is required to be heard at the stage of final hearing of the appeal. It is submitted that accordingly prayer was made, however, the first appellate Court has ignored the said prayer. It is submitted that the order impugned therefore, needs to be set aside.

6. On the other hand, learned counsel for the respondent has supported the impugned order.

7. In the case of ***State of Rajasthan Vs. T.N. Sahani***, the Hon'ble Supreme Court has held as under :

“4.It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy, AIR 1963 Supreme Court 1526, pointed out the scope of unamended provision of Order 41, Rule 27(c) that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of the record as it was, and so, it could not be required additional evidence to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the Court to consider at the time of hearing of the appeal on merits whether looking into the documents which

are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to be Court to look into the documents and for that purpose amended provision of Order 41, Rule 27(b), C.P.C. can be invoked. So the application under Order 41, Rule 27 should have been decided along with the appeal. Had the court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view would be inappropriate. Further, the reason given for the dismissal of the applications is untenable. The order under challenge cannot, therefore, be sustained, it is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.”

8. This court in the case of ***Rajkumar Chaganlal Shah Vs. Gunmala Chandrakant Shah and Ors.***, reported in ***(2020) 2 Mah. LJ 74***, in paragraph 12 and 13, has held as under :-

“12. A perusal of the order passed by the first Appellate Court on 4th November, 2016 on the application filed by the defendant no.2 under Order 41, Rule 27 indicates that the said application is rejected on the ground that the defendant no.2 had not exercised due diligence and had not satisfied the conditions prescribed under Order 41, Rule 27 of the Code of Civil Procedure. The fact remains that the Appellate Court rejected the said application at the threshold and not while hearing the appeal filed by the defendant no.2 finally. The Supreme Court in case of Union of India Vs. Ibrahim Uddin and

another (supra) has considered this issue and has held that the application filed under Order 41, Rule 27 has to be decided at the stage of final hearing and at that stage, if the Appellate Court comes to the conclusion that the case under Order 41 Rule 27 of Code of Civil Procedure was made out, the appeal Court permit the appellant to produce the additional evidence documents. In my view, the order passed by the Appellate Court on 4th November, 2016 rejecting the application filed by the defendant no.2 under Order 41, Rule 27 at the threshold is contrary to the principles of law laid down by the Supreme Court in case of Union of India Vs. Ibrahim Uddin (supra) and thus deserves to be set aside.

13. I am not inclined to accept the submissions of Mr.Kadam, learned counsel for the original plaintiff that even though the said application filed under Order 41, Rule 27 filed by the defendant no.2 was rejected at the threshold, no prejudice was caused to the appellant.”

9. In view of the dictum of the Hon’ble Supreme Court in the case of *State of Rajasthan Vs. T.N. Sahani*, the order impugned cannot be allowed to stand. The order impugned is set aside. The application filed by the petitioner under Order 41 Rule 27 at Exhibit 15 is restored to its file and shall be heard at the stage of final hearing of the appeal.

10. The writ petition is disposed of in aforesaid terms.

(N.R. BORKAR, J.)