



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO.5739/2023

Sanjay s/o Govindrao Chendke (Dead) thr. LR.s. and Ors. .Vs. WCL Ltd. Nagpur
and Others

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

Court's or Judge's orders

Mr. M. P. Khajanchi, Advocate for petitioners.

Mr. N. G. Moharir, Advocate for respondent Nos. 1 and 2.

CORAM : ANIL L. PANSARE, J.

DATE : 19.06.2024

Heard Mr. M. P. Khajanchi, learned counsel for the petitioners and Mr. N. G. Moharir, learned counsel for the respondent Nos. 1 and 2.

2. The challenge is to order dated 02.05.2023 passed by Principal District Judge, Chandrapur, below Exh.-21 in Regular Civil Appeal No. 22/2010. The petitioners-appellants had filed an application under order XLI Rule 27 of the Civil Procedure Code, 1908 seeking to lead additional evidence. The learned Trial Court has rejected the application.

3. The petitioners are before the Court against the rejection of the application. The counsel for the petitioners submits that the issue involved has been answered by the Division Bench of this Court in **Hasanate Taheriyah Fidayyah Vs. Mahesh s/o Kishor Saran, 2014 (2) 884**, wherein in paragraph 13, the Court observed thus:

“13. It can, thus, clearly be seen that the Apex Court, after considering the legal position, has held that an 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 the 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 case. It has been further held that in case, the 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/in-executable and is liable to be ignored.”

4. As could be seen, the application filed under Order XLI Rule 27 for taking additional evidence on record is to be considered 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 case. Admittedly, the Court below has not reached said stage viz. final hearing.

5. As such, the application has been decided at the instance of petitioners-appellants themselves. However, the order being contrary to the settled principles of law, is unsustainable.

6. The order is accordingly quashed and set aside. The application Exh.-21 is restored on file. The Trial Court shall consider the application in terms of judgment noted above.

The writ petition is disposed of in the above terms.

(Anil L. Pansare, J.)