



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

WRIT PETITION NO. 70 OF 2024

Gunwant Anand Mahalle,
Aged about 63 years,
Occ. Agriculturist,
R/o. Shelu Khurd,
Tq. Barshitakli, Dist.Akola.

PETITIONER

Versus

1. Gulab Anand Mahalle,
Aged about 55 Years, Occ. Agri.

2. Ratiram Anand Mahalle,
Aged about 55 Years, Occ. Agri,

Both R/o. Shelu Khurd,
Tq. Barshitakli, Dist. Akola.

RESPONDENTS

Mr. N.S. Warulkar, Advocate for the Petitioner.
Mr. S.A. Mohta, Advocate for the Respondents.

CORAM : BHARAT P. DESHPANDE, J.

DATED : 15th MARCH, 2024

ORAL JUDGMENT :-

Heard.

2. **Rule.** Rule is made returnable forthwith.

3. Heard finally with the consent of the learned counsels for the respective parties.

4. The petitioner is challenging the order passed by the learned Additional Sessions Judge, Akola dated 12.07.2023 in Regular Civil Appeal No. 117/2018, whereby the application filed by the petitioner/appellant under Order 41 Rule 27 of the Code of Civil Procedure, is rejected.

5. Mr. Warulkar, learned counsel for the petitioner, would submit that during the pendency of appeal, the appellant filed an application for production of original sale deed in order to prove his case, however such application has been rejected by observing that no ground is made out and the xerox copies are already on record.

6. Mr. Warulkar, learned counsel for the petitioner, would further submit that the application ought to have been

decided alongwith the main appeal and not at the interim stage.

7. Mr. Mohta, learned counsel for the respondents, submits that the petitioner insisted that his application be taken up and decided before the appeal could be heard and accordingly the impugned order was passed.

8. A short controversy in the present proceedings is whether the application filed for production of additional document under Order 41 Rule 27 of the Code of Civil Procedure could be taken up for disposal before the appeal is heard on merit.

9. This aspect is no more *res integra* and decided by the various Courts including the Hon'ble Apex Court in the case of *Union of India Vs. Ibrahim Uddin and Anr., (2012) 8 SCC 148*.

10. The observation of the Hon'ble Apex Court in para 48 and 49 are relevant which reads thus.

“48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court

can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.

49. *An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide Arjan Singh v. Kartar Singh (AIR 1951 SC 193) and Natha Singh v. Financial Commr., Taxation ((1976) 3 SCC 28 : AIR 1976 SC 1053)."*

11. Thus, it is now a settled proposition of law that any application filed under Order 41 Rule 27 of the Code of Civil Procedure for production of additional evidence documentary or otherwise, will have to be taken up alongwith the appeal on

merit and only while doing so when the Court comes to the conclusion that additional evidence is necessary to decide the dispute between the parties effectively, such application could be allowed subject to other parameters.

12. In the present matter, the learned First Appellate Court by ignoring the settled proposition of law, decided the application under Rule 27 of Order 41 of the Code of Civil Procedure at the interim stage itself. Admittedly, the appeal is still pending and the same is not argued on merits. Thus, the impugned order needs interference. Accordingly, the impugned order dated 12.07.2023, is hereby quashed and set aside. The application Exh. 9 filed by the petitioner/appellant, is restored to the file of the learned First Appellate Court. The learned First Appellate Court shall decide such application alongwith the appeal on merit as observed in the above decision of the Hon'ble Apex Court.

13. Needless to mention here that this Court has not gone into the merits of such application, which the learned First Appellate Court is required to consider on its own merits and in

accordance with law.

14. The Petition is accordingly **allowed**.

15. Rule is made absolute in the above terms. No costs.

16. Pending application/s, if any shall stand disposed of accordingly.

(BHARAT P. DESHPANDE, J.)

S.D.Bhimte