



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 14755 OF 2021

Daulat Namdeo Dhangar

.. Petitioner

Versus

Prakash Bajirao Tayade (deceased)
Through L.Rs. Latabai Prakash Tayade
And Others

.. Respondents

Mr. Shaikh Mohammad Naseer A., Advocate for the Petitioner.
Mr. Ajit M. Gholap, Advocate for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATE : 10th NOVEMBER, 2025.

PER COURT :-

1. Heard learned advocates for the parties.
2. By way of present petition, the petitioner has challenged an order dated 05.09.2019 passed by the learned Appellate Judge on an application below Exh. 19 in R.C.A. No. 58/2015. The learned Judge by way of impugned order has rejected the application of the petitioner – original defendant filed under Order 41 Rule 27 of the Code of Civil Procedure. It is the case of the petitioner that, though the documents were given to the earlier advocate who

filed an appeal, those were not brought on record. He did not produce the same in the learned Trial Court during the course of trial, nor the advocate filed any such application. Therefore, the application was filed at belated stage. The learned Trial Judge held that, in the Trial Court the evidence of the petitioner was closed by pursis Exh. 79. After the decision of the suit, appeal came to be filed in the year 2014. However, for the first time on 12.07.2019 the application is moved by the petitioner and rejected the application.

3. The learned advocate Mr. Shaikh for the petitioner vehemently argued that, the learned Appellate Judge has committed a mistake by not allowing the application. The application ought to have been allowed. In the alternative, he submits that, it is settled position of law that such application should be decided at the stage of final hearing. In the present case, the Court ought to have waited till final hearing, however, the application is taken up for hearing immediately and is rejected.

4. The learned advocate Mr. Gholap for respondent Nos. 1 to 4

vehemently opposed the petition. He submits that, no case is made out for accepting the application at belated stage. The appeal was ready for hearing and it is at that stage the petitioner deliberately filed an application just to prolong the hearing of the appeal. He points out from the learned Trial Court's judgment that, since beginning it is the case of the petitioner – defendant that there was agreement to sale dated 28.12.2006 executed between the plaintiff and defendant, however, the same is not produced in the learned Trial Court and even in the appeal when the appeal was filed. It was necessary for the petitioner to file such application alongwith appeal itself. He submits that, the application is thus filed only to prolong the hearing. The appeal and the petition deserves to be dismissed with costs.

5. There is no dispute about the said proposition that such application need to be decided at the stage of hearing of the appeal. During the course of argument, learned advocate for the petitioner has produced on record an order dated 22.07.2019 passed in Writ Petition No. 11226/2017 in the case of Bilquis Khanum w/o Iqbal Khan and another Vs. Vitthal s/o Kerba Bhalerao (died), through LR's. This Court in the said case relying

upon the judgment in the case of **Malyalam Plantations Limited Vs. State of Kerala and another, AIR 2011 SC 559** directed the Appellate Court to decide the application alongwith final hearing of the appeal. In the present case, certainly the course was open for the learned Appellate Court to decide the application alongwith appeal. From the conduct of the parties it is seen that the parties, however, are not ready to wait till final argument of the appeal and they insist the Court for passing orders immediately which makes the Court to pass such orders. It is also clear that, such application is to be filed in the cases where the learned Trial Court refuses to admit it. Secondly, the evidence was not available to the party despite exercise of due diligence and thirdly, the learned Appellate Court requires the additional evidence so as to enable it to pronounce the judgment or for any other substantial cause of a like nature.

6. As rightly pointed out by learned advocate Mr. Gholap that since beginning it is the case of the petitioner - defendant that, defendant is in possession by virtue of agreement to sale dated 28.12.2006, the document which is now sought to be produced on record. A case is thus not clearly covered by clause (i) that the

learned Trial Court has refused to admit the evidence. It also rules out the second ground that the evidence was not available to the party despite of exercise of due diligence. So far as third clause is concerned, it is not pointed out as to how the learned Appellate Court would come to a different conclusion even if the document is taken on record. In the present case, the learned Trial Court has already dealt with the aspect of the agreement to sale dated 28.12.2006. For all these reasons this Court finds that, no purpose would be served even by directing the learned Appellate Court to decide this application afresh.

7. This Court does not find any perversity or illegality in the impugned order. No case is made out to interfere with the writ petition. Therefore, the writ petition stands dismissed. No order as to costs.

8. Since the appeal is pending since 2014, it is expected of the learned Appellate Court to decide it as early as possible and preferably within three (03) months from today.

(KISHORE C. SANT, J.)

PS.B.