



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.505 OF 2024

Mr. Ramesh Appa Harmalkar,
Aged about 65 years, Married,
Businessman, R/o H.No. 63,
Angiwada, Gurim, Bardez, Goa.

...PETITIONER

VERSUS

1. Mr. Rohidas Appa Harmalkar,
since Deceased through his LR's,
1.A) Mr. Laxman Rohidas Harmalkar,
son of Mr. Rohidas Appa Harmalkar,
Aged about 26 years, Unmarried, Businessman

1B) Mr. Tushar Rohidas harmalkar
son of Mr. Rohidas Appa Harmalkar
Aged about 22 years, Unmarried, Businessman

2. Mrs. Ranju alias Rupali Rohidas Harmakar,
widow of Mr. Rohidas Appa Harmalkar Aged
about 40 years, widow, Housewife,
All r/o H No. Nil C/o Zilu Fernandes,
Zakani Wado Parra Bardez, Goa.

...RESPONDENTS

Mr. Sarvadnya D. Patil, Advocate for the Petitioner.

Mr. Amey Salatry, Advocate for Respondent No. 1.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 07th August 2024

ORAL JUDGMENT.

1. Rule.
2. Rule is made returnable forthwith.

3. The petition is taken up for final disposal at the admission stage with consent.

4. The challenge in the present petition is to the rejection of the application for amendment of the plaint as well as production of additional documents, passed by the First Appellate Court.

5. The petitioner is the original plaintiff who filed an appeal challenging the order of the Trial Court. During pendency of the appeal before the First Appellate Court, an application for amendment of the plaint along with application for production of additional documents are filed.

6. The learned First Appellate Court took up both these applications separately and independently, and decided it by rejecting both applications. The first appeal is now placed for final arguments.

7. The learned counsel for the petitioner submits that the amendment application is rejected only on the ground that the application for production of additional documents stands rejected. He submits that independently deciding such applications without considering the matter on merits is infact an infirmity in the order which requires correction.

8. Mr. Salatry learned counsel appearing for the respondent claimed that the documents and the amendment is sought at the fag end of the appeal, however, he clearly submitted that the application are required to be decided along with the appeal and not independently.

9. In the case of ***Union of India Vs. Ibrahim Uddin & Anr., 2012 (5) ALL MR 462 (SC)***, the Apex Court has considered powers under Order XLI Rule 27 of the Civil Procedure Code (C.P.C. for short) with regard to the application for taking additional evidence/documents on record. After discussing various decisions, it has been observed in paragraph 41 that *an application for taking additional evidence on record at an appellate stage, even if filed during pendency of the appeal, is to be heard at the time of 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 judgement or for any other substantial cause*. It further observed that *in case, such application for taking additional evidence on record has been considered and allowed prior to 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 judgement or not, remains inconsequential/inexecutable and is liable to be ignored. The above observations of the Apex Court squarely applicable to the matter in hand.

10. The learned First Appellate Court by ignoring the settled proposition of law independently and separately decided the application filed by the appellant for production of additional evidence/documents as well as amendment.

11. Such approach of the learned First Appellate Court is incorrect and is by ignoring the settled proposition of law and requires correction under the supervisory jurisdiction of the Court. Accordingly, both impugned orders are quashed and set aside.

12. The applications filed by the appellant for production of additional documents as well as amendment to the plaint are restored with directions to the First Appellate Court to decide it a fresh along with the first appeal and as observed by the Apex Court, in the case of ***Union of India (supra)***.

13. Rule is made absolute in above terms.

14. It is submitted that the appeal is now fixed for final hearing on 19th of August 2024. It is expected that the First Appellate Court shall hear the appeal along with the two applications for production of documents and the amendment application to be decided together with the appeal in accordance with law.

BHARAT P. DESHPANDE, J.