

(2010) 02 BOM CK 0115

Bombay High Court (Nagpur Bench)

Case No: Letters Patent Appeal No's. 386 and 475 of 2009 in Writ Petition No's. 3884 of 2008 and 535 of 2009

Abdul Aziz Abdul Rafique Kadri

APPELLANT

Vs

Mohammad Yusuf Shaikh
Hussain

RESPONDENT

Date of Decision: Feb. 2, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: (2010) 3 ALLMR 61 : (2010) 2 BomCR 1

Hon'ble Judges: Varale P.B., J; Joshi A.H., J

Bench: Division Bench

Advocate: A.V. Khare, in L.P.A. Nos. 386 and 475/2009, for the Appellant; P.V. Vaidya in L.P.A. Nos. 386 and 475/2009, for the Respondent

Final Decision: Dismissed

Judgement

Joshi A.H., J.

Admit. Learned Advocate Mr. P.V. Vaidya waives service for respondent sole.

2. Heard finally by consent.

3. The dispute revolves around entitlement of respondent to produce additional evidence, amend the plaint and proceed with the suit afresh.

4. The objection of appellant to all these things is on the following point:

That the application under Rule 27 of Order 41 of CPC does not spell out that in spite of due diligence, the documents were beyond control of the party and hence should not have been allowed.

5. This Court has perused the application under Order 41, Rule 27, Civil Procedure Code, filed by the respondent. It is seen that in the long-drawn application, specific

words as to fact that despite due diligence of the applicant, the documents could not be found and filed in the trial Court are seen absent in said terminology.

6. It is, however, seen that the relevance of documents is duly borne out. Respondent has also explained as to how he came to know about existence of documents.

7. This Court has also perused impugned order of learned Single Judge allowing the writ petition and allowing application under Order 41, Rule 27, Civil Procedure Code, and also application for amendment of plaint.

8. Learned Single Judge has held in spirit that in absence of knowledge about existence of documents, due diligence was liable to be inferred. As the documents became relevant, the need of amendment also became obvious to learned Single Judge.

9. In view of the fact situation and findings aforesaid, the learned Single Judge held that in the interest of justice, it was necessary to allow production of documents, allow amendment and let the necessary consequence of remand etc., to follow.

10. The impugned orders are, thus, the necessary fallout of warrant of justice.

11. This Court is satisfied that the technicality as to whether there is a proper and adequate pleading as to the documents being beyond control of the party in spite of due diligence is a matter of spirit to be noted than technicality of the language of pleading, and it is complied with by the respondent.

12. In the circumstances, the impugned orders result in advancing cause of justice.

13. No interference is called for. Appeals are dismissed. In the circumstances, parties are directed to bear own costs.