

(2011) 02 BOM CK 0148

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 675 of 2010

Shri Devendra Raghuraj
Deshprabhu and Shri Jitendra
Raghuraj Deshprabhu

APPELLANT

Vs

Rajendra Vassudeo Deshprabhu
through heirs Vasudeo R.
Deshprabhu and Nayantara R.
Deshprabhu and Aparna R.
Deshprabhu, house wife

RESPONDENT

Date of Decision: Feb. 21, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Constitution of India, 1950 - Article 227

Hon'ble Judges: A.P. Lavande, J

Bench: Single Bench

Advocate: D.J. Pangam and P. Bandodkar, for the Appellant; A.N.S. Nadkarni and H.D. Naik, for the Respondent

Judgement

A.P. Lavande, J.

Rule. By consent of the learned Counsel for the parties heard forthwith.

2. By this petition under Article 227 of the Constitution of India, the Petitioners take exception to the order dated 7th August, 2010 passed by the District Judge-I at Mapusa in Regular Civil Appeal No. 75/2009 by which the application filed by the Petitioners under Order XLI, Rule 27(b) of CPC has been dismissed. Although several contentions have been urged in support of the petition, the petition is liable to be allowed in view of the judgment in the case of State of Rajasthan v. T.N. Sahani and Ors., (2001) 10 SCC 619 . In the said case, the Apex Court has held that the application under Order XLI, Rule 27 of CPC should be decided along with the appeal considering the necessity of the documents sought to be produced as additional

evidence, for pronouncing the judgment more satisfactorily.

3. Indisputably, the lower appellate Court before taking up the appeal for hearing, has decided the application under Order XLI, Rule 27(b) of C.P.C., which is clearly in breach of the judgment of the Apex Court in the case of State of Rajasthan (supra). On this ground alone, the impugned order is set aside. The lower appellate Court to decide the application filed by the Petitioners herein at the time of final hearing of the appeal.

4. Needless to mention that all the contentions of the rival parties are kept open.

5. Rule is made absolute in aforesaid terms with no order as to costs.