

(2011) 06 BOM CK 0153
In the Bombay High Court
Case No : Writ Petition No. 877 of 2011

Vijay Madanlal Batra

APPELLANT

Vs

Deveshkumar Shivhare

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 41 Rule 27
Constitution of India, 1950 — Article 226, 227

Citation : (2011) 7 ALLMR 700 : (2011) 5 BomCR 68 : (2011) 5 MhLj 61

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : M.M. Sawang, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule made returnable forthwith. None for the Respondent.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 16/12/2010 passed by the learned District Judge, Nagpur on application (Exh. 27) filed by the Petitioner herein in Regular Civil Appeal No. 237/2009, whereby the said application (Exh. 27) came to be dismissed.

3. The Petitioner herein has suffered an eviction decree in Civil Suit No. 535/2004 filed by the Respondent herein. The said suit was filed for eviction and possession of the disputed shop premises on the ground of bonafide requirement of the Respondent. Against the said decree, the Petitioner herein filed an appeal, which was registered as Regular Civil Appeal No. 237/2009. At the appellate stage, relying upon Order XIII Rule 1 of the Code of Civil Procedure, the Petitioner sought to produce two documents. The first document is in the nature of certificate obtained from the Head Mistress of one Onkarlal Sindhu High School, Jaripatka, Nagpur wherein it is mentioned that the Respondent herein was working in the said School as Shikshan Sevak from 1/7/2009. The second

document was obtained by the Petitioner under the Right to Information Act wherein Petitioner is shown as a tenant in the proceedings to fix taxes in question of the rented premises. The said application for production of documents came to be rejected by the impugned order.

4. Insofar as first document is concerned, the appellate Court observed that the subject matter of the said document has already been dealt with by the trial Court and that the said document was not even in existence on the date of the judgment of the trial Court. So far as the second document is concerned, since the Respondent landlord has admitted that the Petitioner is a tenant of the premises in question, according to the appellate Court, the said document was not material. It is required to be noted that the matter is at the appellate stage and, therefore, the Petitioner could not have taken recourse to Order XIII Rule 1 of the Code of Civil Procedure. If the Petitioner wanted to produce additional evidence, appropriate remedy for him would have been to invoke Order XLI Rule 27 of the CPC to produce additional evidence. In my view, therefore, application filed under Order XIII Rule 1 of the CPC at the appellate stage being misconceived, no interference is called for with the impugned order in the writ jurisdiction. The writ petition is accordingly dismissed. Rule discharged. No order as to costs.