

GAHC010043322023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/233/2023

BIMAL DEB
S/O LATE NARENDRA DEB, R/O PUJADUBI, BLOCK NO. 1, JORHAT TOWN,
P.O. AND P.S. AND DIST- JORHAT, PIN-785001

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAYS,
MALIGAON, GUWAHATI-11, DIST- KAMRUP (M), ASSAM

2:THE GENERAL MANAGER
N.F. RAILWAYS
MALIGAON
GUWAHATI-11
DIST- KAMRUP (M)
ASSAM

3:THE DIVISIONAL MANAGER
N.F. RAILWAYS
TINSUKHIA
DIST- TINSUKHIA
ASSAM
PIN-786125

4:THE ESTATE OFFICER
N.F. RAILWAYS
TINSUKHIA
DIST- TINSUKHIA
ASSAM
PIN-786125

5:THE SENIOR SECTION OFFICER

N.F. RAILWAY
MORIANI
DIST-JORHAT
PIN-785001

6:THE ASSISTANT DIVISIONAL ENGINEER
N.F. RAILWAY
MORIANI
DIST-JORHAT
PIN-78563

Advocate for the Petitioner : MS F AHMED

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

02.08.2023

Heard Ms. F Ahmed, learned counsel for the petitioner whereas the Railways are represented by Shri B Chakraborty.

2. Considering the nature of challenge and as agreed to by the parties, this petition is taken up for disposal at the admission stage.

3. The projected case of the petitioner is that an appeal was preferred under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 before the learned District Judge, Jorhat which was registered as Misc. Appeal No. 38/2018. Along with the said appeal, a petition was filed being No.944/2022 under Order XLI Rule 27 CPC for allowing the petitioner to adduce additional evidence at the appellate stage by examining the Senior Divisional Engineer of the NF Railways, who had furnished certain information under the RTI Act.

4. The aforesaid prayer made for adducing evidence at the appellate stage, however, has been rejected vide the impugned order dated 16.12.2022.
5. Ms. Ahmed, learned counsel submits that the Appellate Court ought to have exercised the aforesaid powers allowing the affected party to adduce evidence at the appellate stage in the interest of justice. She, accordingly submits that necessary order of interference be passed and the application filed under Order XLI Rule 27 CPC be directed to be considered in accordance with law.
6. *Per contra*, Shri Chakraborty, learned CGC representing the Railways has, however, submitted that the issue raised is no longer *res integra*. He submits that the Hon'ble Supreme Court in the case of ***Andisami Chettiar Vs. Subburaj Chettiar***, reported in **(2015) 17 SCC 713** has laid down that admissibility of evidence does not depend upon the relevancy to the issue on hand, or on fact whether the applicant had an opportunity for adducing such evidence at an earlier stage or not but it depends upon whether or not the Appellate Court requires such evidence to enable pronouncement of the judgment or for any other substantial cause.
7. In the similar circumstances, there was a rejection of an application made under Order XLI Rule 27 CPC which was the subject matter of dispute and this Court vide certain orders, including an order dated 27.02.2023 passed in CRP(IO)58/2023 had rejected the petition.
8. This Court is also of the opinion that the application of Order XLI Rule 27 CPC cannot be done in a routine manner and the conditions precedent laid down in the said provision of law are required to be fulfilled. For ready reference, the said provision of law is extracted hereinbelow:

“27. Production of additional evidence in Appellate Court

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

9. It is clear that such evidence are not normally required to be allowed to produce at the appellate stage and only on certain conditions, an exception is to be made out. In the instant case, the evidence sought to be adduced does not appear to fall within the exceptions made out in Order XLI Rule 27 (a), (aa) and (b). This Court has also noticed that the information gathered by the petitioner could have been proved before the Estate Officer at the stage when such proceeding was initiated and that not having been done, there is no scope for application of Order XLI Rule 27 of the CPC.

10. In view of the above, this Court is of the opinion that no case for

interference is made out and accordingly, this writ petition stands dismissed.

JUDGE

Comparing Assistant