



2026:UHC:4909

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<u>WPMS/1620/2026</u> <u>Hon'ble Manoj Kumar Tiwari, J.</u> Mr. Vijay Bhatt, Senior Advocate, assisted by Mr. Priyank Kharkwal, Advocate for the petitioners. 2. Mr. Sudhir Kumar Nailwal, Standing Counsel for the State of Uttarakhand/ respondent no. 7. 3. Ms. Anjali Bhargava, Advocate for respondent no. 8. 4. Mr. Shobhit Saharia, Advocate for the caveators. 5. A declaratory suit under Section 229-B of Zamindari Abolition and Land Reforms Act was filed against the petitioners by respondent nos. 1, 2 & 3; the said suit was decreed by learned Assistant Collector, First Class, Gadarpur, Udham Singh Nagar, vide judgment dated 30.08.2025. Petitioners filed appeal against the said judgment, which is pending before Commissioner, Kumaon Division, Nainital and numbered as Appeal No. 138/24-25. In that appeal, petitioners moved an application under Order 41 Rule 27 CPC for filing additional evidence. The said application was rejected by the Appellate Court, vide order dated 21.05.2026. In this writ petition, petitioners have challenged the said order passed by Appellate Court. 6. Hon'ble Supreme Court in the case of Union of India Vs. Ibrahim Uddin and another reported as (2012) 8 SCC 148



		has held as under:- “52. Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the 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 judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the 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 judgment or not, remains inconsequential/inexecutable and is liable to be ignored. 53. In the instant case, the application under Order 41 Rule 27 CPC was filed on 6-4-1998 and it was allowed on 28-4-1999 though the first appeal was heard and disposed of on 15-10-1999. In view of law referred to hereinabove, the order dated 28-4-1999 is just to be ignored.” 7. Learned counsel for the petitioners submits that in the present case, the application filed under Order 41 Rule 27 CPC was considered and rejected much before the stage of final hearing, which is contrary to the dictum of the aforesaid judgment. 8. This Count finds substance in the said submission. 9. In view of the judgment rendered by Hon’ble Supreme Court in the aforesaid case, the application for additional evidence has to be considered only when the appeal is ripe for final hearing. 10. Since in the present case, application was considered and rejected at a much earlier stage, therefore, on this ground alone, the impugned order dated 21.05.2026 is liable to be set
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aside and is hereby set aside. The writ petition is allowed; the application filed by petitioners shall stand restored to the file of the Appellate Court, which shall be considered and disposed of by the Appellate Court while hearing the final arguments in the pending Appeal. The Appellate Court is also requested to expedite hearing of the appeal.

(Manoj Kumar Tiwari, J.)

16.06.2026

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