



| SL. No. | Date | Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures | COURT'S OR JUDGE'S ORDERS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|         |      |                                                                                                  | <p><b><u>WPMS/1939/2026</u></b></p> <p>Tarun Himalaya<br/>--Petitioner</p> <p style="text-align: center;"><b>Versus</b></p> <p>Bhel Ranipur<br/>--Respondent</p> <p><b><u>Hon'ble Manoj Kumar Tiwari, J</u></b></p> <p>1. Mr. Sagar Kothari, learned counsel for the petitioner.</p> <p>2. Mr. Ghanshyam Joshi, learned Additional C.S.C. for the State of Uttarakhand.</p> <p>3. Mr. Lalit Miglani, learned counsel for respondent no. 2.</p> <p>4. Mr. Birendra Singh Adhikari, learned counsel for the respondent-BHEL.</p> <p>5. Petitioner has challenged order dated 24.03.2026 passed by Commissioner, Garhwal Division, whereby the application filed by BHEL (<i>defendant</i>) under Order 41 Rule 27 CPC, for bringing additional evidence on record, was allowed. The revision petition filed by petitioner was dismissed by Board of Revenue vide judgment dated 11.06.2026.</p> <p>6. This Court is not inclined to interfere with the order passed by Commissioner, Garhwal Division, as affirmed by Board of Revenue. Perusal of Commissioner's order indicates that photocopy of all the documents, which were sought to be brought on record by BHEL (<i>defendant</i>), were produced before the trial court i.e. Assistant Collector and</p> |



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|  |  |  | <p>BHEL only wanted to produce the certified copy of those documents by moving an application under Order 41 Rule 27 CPC.</p> <p>7. Perusal of the impugned order further reveals that documents, sought to be brought on record, are public documents, namely, Gazette Notification, Possession Certificate and the records maintained by Tehsil Authorities.</p> <p>8. Learned counsel for the petitioner submits that in view of law declared by Hon'ble Apex Court in the case of <i>Union of India vs Ibrahim Uddin &amp; another, reported in (2012) 8 SCC 148</i>, the appellate court was not right in considering the application under Order 41 Rule 27 CPC before reaching the stage of final hearing.</p> <p>9. Mr. Birendra Singh Adhikari, learned counsel for BHEL, however, submits that the case has reached the stage of final hearing, and next date fixed is 17.07.2026.</p> <p>10. Accepting certified copy of the documents, photocopy whereof is already on record, does not cause any prejudice to the petitioner (<i>plaintiff</i>). Order 41 Rule 27 CPC is extracted below for ready reference:-</p> <p><b>"27. Production of additional evidence in Appellate Court.</b></p> <p>(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-</p> <p>(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or</p> <p>(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge</p> |
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|  |  |  | <p>or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or</p> <p>(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.</p> <p>(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."</p> <p>11. Perusal of Order 41 Rule 27 CPC reveals that it enables appellate court to accept any document or any witness to be examined, which enables it to pronounce judgment or for any other substantial cause, however, the said provision do not create any right in favour of a party to produce additional evidence.</p> <p>12. Since the appellate court was of the view that the documents, which BHEL wanted to produce, are needed for arriving at a just conclusion, therefore, the order, whereby the application made by BHEL was allowed, cannot be faulted. Courts are meant to do justice between the parties and any order which is a step in aid towards achieving that objective cannot be said to be illegal.</p> <p>13. Having regard to the facts and circumstances of the case, especially the nature of documents, which were sought to be brought on record, this Court do not find any reason to interfere in the matter.</p> <p>14. Accordingly, the writ petition fails and is dismissed.</p> <p style="text-align: right;"><b>(Manoj Kumar Tiwari, J)</b><br/>13.07.2026</p> <p>Aswal</p> |
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