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**IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR**

W.P.(227) NO. 151 /2014 Single Bench

**PETITIONERS
APPELLANTS
DEFENDANTS**

- 1] Aniruddha Dayal Agrawal, S/o. Madho Dayal (wrongly typed as "Madhu Dayal"), aged about 79 years, R/o. Ward No.8, Arang, Police Station and Post Arang, Civil and Revenue District Raipur (C.G.)
- 2] Smt. Ahilya Bai, W/o. Aniruddha Dayal Agrawal, aged about 70 years, R/o. Ward No.8, Arang, Police Station and Post Arang, Civil and Revenue District Raipur (C.G.)

151/14
Presented by Smt. R. Rajim
dated 21/12/14

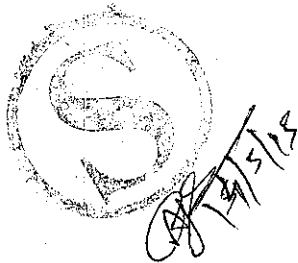
VERSUS

**RESPONDENT
PLAINTIFF**

: Raghunandanlal, S/o. Baikunthlal, aged about 56 years, R/o. Rajim, Police Station and Post Rajim, Civil and Revenue District Raipur (C.G.)

**WRIT PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA**





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HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Writ Petition (227) No. 151 of 2014

PETITIONERS/

Aniruddha Dayal Agrawal and

DEFENDANTS

another

VERSUS Raghunandanlal

RESPONDENT/

PLAINTIFF

Writ Petition (227) No. 157 of 2014

PETITIONERS/

Aniruddha Dayal Agrawal and

DEFENDANTS

another

VERSUS

RESPONDENT/

Raghunandanlal

PLAINTIFF

Shri Vaibhav Goverdhan counsel for the petitioner in both the cases.

Shri Anurag Dayal Shrivastava counsel for the respondent in both the cases.

WRIT PETITIONS UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

ORDER
(06.05.2015)

The petitions, two in number, are disposed of by this common order as the order under challenge therein dated 12.2.2014 passed by District Judge, Raipur is one and the same.

2. The suit filed by the respondent/plaintiff for eviction, mesne profit and possession was decreed vide judgment and decree

dated 30.4.2010 passed by Civil Judge Class I Raipur. The appeal preferred against this judgment and decree by the petitioners/defendants is said to be pending for adjudication before the District Judge, Raipur. During pendency of the appeal, the petitioners/defendants moved an application under Order XLI Rule 27 read with Section 151 CPC vide Annexure P-8 for producing additional evidence. Subsequently, an application under Order VI Rule 17 CPC was also filed by the petitioners/defendants to amend the written statement on the basis of additional evidence to be adduced by them. Vide order dated 12.2.2014 the Court below has rejected both the applications filed by the petitioners/defendants by a common order which is under challenge herein.

3. Counsel for the petitioners/defendants submits that application under Order XLI Rule 27 read with Section 151 CPC can only be decided along with appeal and not separately. Likewise, according to the counsel for the petitioners, the application filed under Order VI Rule 17 CPC seeking amendment in the written statement at the stage of appeal can also be decided at the time of deciding the appeal. In support of his submission, counsel for the petitioners placed his reliance on the decision of the Apex Court in the matter of **Union of India v. Ibrahim Uddin and another** reported in **2013 AIR SCW 2752** and that of High Court of Madhya Pradesh in the matter of

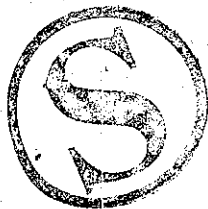
Khemchand Mulchand v. Government of Madhya Pradesh, Bhopal reported in 1972 MPLJ 524.

4. On the other hand, counsel for the respondent supports the order impugned and submits that the same being in accordance with law does not require any interference in these petitions.

5. Heard counsel for the parties and perused the documents on record.

6. It is a settled legal position that application under Order XLI Rule 27 CPC filed during pendency of first appeal should not be decided before hearing the appeal on merits. Appeal must be heard on merits and then the appellate Court is required to consider whether the application for production of additional evidence should be allowed or not. If such application is allowed then the appeal has to be heard again on merits after reception of additional evidence. Likewise, the application filed under Order VI Rule 17 CPC at the appellate stage is also required to be considered along with appeal being decided on merits.

7. Thus keeping in view the aforesaid factual position and the law laid down by the Apex Court in the matter of **State of Rajasthan v. T.N. Sahani and others** reported in (2001) 10 SCC 619, in the matter of **Eastern Equipment & Sales Limited v. ING. Yash Kumar Khanna** reported in (2008) 12 SCC 739, in the matter of **Union of India v. Ibrahim Uddin and another** (*supra*),



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in the matter of ***Khemchand Mulchand v. Government of Madhya Pradesh, Bhopal*** (*supra*) and in the matter of ***Abhay Kumar Nathu Lal Jain v. Santosh Kumar Madan Lal Naik*** reported in (2001) 1 Civil L.J. 70, this Court is of the opinion that the order impugned dated 12.2.2014 is liable to be set aside. It is done accordingly. Applications filed by the petitioners/defendants under Order XLI Rule 27 read with Section 151 as well as the one under Order VI Rule 17 CPC are restored to their original number. Appellate Court is directed to decide those applications along with appeal. As the appeal is said to be pending since 2010, let it be decided within two months from the date of receipt of copy of this order.

8. Petitions are allowed.

Sd/-
Pritinker Diwaker
Judge