

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14707 of 2014

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1. Sheela Verma w/o Late Mahanth Awadh Prasad Verma
 2. Ravi Prakash Verma S/o Late Mahanth Awadh Prasad Verma
 3. Prabhat Ranjan Verma S/o Late Mahanth Awadh Prasad Verma
 4. Vikash Kumar Verma S/o Late Mahanth Awadh Prasad Verma
 5. Gyanesh Kumar @ Gyanesh Kumar Verma S/o Late Mahanth Awadh Prasad Verma
 6. Chandan Kumar Verma S/o Late Mahanth Awadh Prasad Verma
 7. Deep Mala @ Rashmi d/o Late Mahanth Awadh Prasad Verma All R/o Mahabir Asthan, Main Road, East Gandhi Maidan, P.S. - Gandhi Maidan, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Patna.
2. The Collector, Patna, District - Patna.
3. The Additional Collector, Patna.
4. The Deputy Collector, Land Reforms Sadar, Patna.
5. The Circle Officer, Sadar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Adv.
For the Respondent/s : Mr. Partha Sarthy, GA-4-Adv.
Mr. Apurva Kumar, AC to G.A.-4.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-10-2016

Heard Mr. Ranjan Kumar Dubey, learned counsel for the petitioners and Mr. Partha Sarthy, learned counsel for the respondents.

Questioning the legal acceptability of the impugned order by which the learned court below has rejected the prayer on behalf of the appellant-petitioners made under Order 41 Rule 27 C.P.C. seeking



to adduce some documents by way of additional evidence, the present application under Article 227 of the Constitution of India has been filed.

Learned counsel for the parties, after some argument, have expressed their agreement to the proposition that the principle of law as laid down by the Apex Court in the case of **Union of India Vs. Ibrahim Uddin PLJR 2013 (1) SC 48** would be applicable in the facts and circumstances of this case. The Apex Court in this decision has considered the various facets of Order 41 Rule 27 C.P.C. including the stage at which the consideration to the prayer for adducing additional evidence can be bestowed and has laid down as follows:-

“ 41. Thus, from the above, it is crystal clear that 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 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 pronounce the judgment or for any other substantial cause. In case, 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.....”

Tested on the dictum as above, the impugned order by which the learned court below has turned down the prayer made on behalf of the appellant-petitioners for adducing additional evidence and rejected the petition in that regard admittedly at the stage prior to the hearing of the appeal cannot be sustained. Accordingly, the impugned order is fit to be set aside on that ground. However, the matter does not end here as the submission by Mr. Partha Sarthy, learned counsel for the respondents is that in case the appellate court below comes to uphold the prayer as made on behalf of the appellant-petitioners for adducing additional evidence, the opportunity in such a circumstances must be granted to the respondents in the appeal to lead evidence in rebuttal. Mr. Dubey, learned counsel for the petitioners has not disputed the proposition as raised on behalf of the respondents.

After considering the submission and stand on behalf of the parties, this Court finds substance in the prayer on behalf of the respondents for grant of opportunity to the respondents to bring on record the evidence in rebuttal, if so advised, prior to the stage when



the appeal is taken up for hearing.

Accordingly, this application is succeeds and impugned order is set aside. The appellate court below, however, is directed to consider the application filed on behalf of the appellant under Order 41 Rule 27 C.P.C. at the appropriate stage as laid down in **Ibrahim Uddin** (supra). The necessity for considering the evidence filed on behalf of the respondents in rebuttal would abide by the decision of the appellate court on the pending application under Order 41 Rule 27 C.P.C. as directed.

(V. Nath, J)

Devendra/-

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