

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2392 of 2016**

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Hazar Choudhary

.... .... Petitioner/s

Versus

Arun Kumar Pandey & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Kaushal Kishore Mishra

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
**ORAL ORDER**

5 16-11-2016

Heard the learned counsel, Mr. Kaushal Kishore Mishra

for the petitioner and learned counsel, Mr. Chandra Kant for the  
respondents except respondent No.10 and the learned counsel, Mr.  
Parth Gaurav for the respondent No.10.

Perused the impugned order dated 06.11.2015 passed by  
4<sup>th</sup> Additional District Judge, Siwan in Title Appeal No.38 of 2010  
whereby the learned lower appellate court has rejected the  
application under Order 41 Rule 27 C.P.C. filed by the defendant-  
appellant-petitioner.

From perusal of the impugned order, it appears that  
lower appellate court has rejected the application only on the  
ground that the documents were not produced before the lower  
court and this application has been filed after lapse of more than  
18 years from the date of filing the suit being Title Suit No.252 of  
1996.



The Hon'ble Supreme Court in the case of **Union of India v. Ibrahim Uddin and another, 2013(1) PLJR 48(SC) = (2012) 8 Supreme Court Cases 148** has held that “an application under Order XLI Rule 27 C.P.C. is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the 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 the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court vide paragraph 38(PLJR).

From perusal of the impugned order, it appears that the Court below has not at all considered the provision as contained in Order 41 Rule 27 C.P.C. The Court below has also not recorded



any finding as to whether the documents are relevant or not. The Court below has also not recorded any finding that the Court requires the documents for pronouncing satisfactory judgment or not. Only on technical ground that the documents were not produced before the trial court and that it has been filed after 18 years before the appellate court has rejected the application.

The learned counsel for the respondents relied upon the judgment of the Supreme Court in **A.Andisamy Chettiar v. A. Subburaj Chettiar, 2016(1) PLJR 394(SC)** and submitted that there is no universal law that whenever an application under Order 41 Rule 27 C.P.C. is filed by the appellant before the lower appellate court, the application has to be considered at the time of hearing of the appeal. According to the learned counsel, the Supreme Court in this decision has directed the lower appellate court to decide the application for additional evidence afresh. From perusal of the decision at paragraph 18, it appears that in that case, the Supreme Court has considered the principles and held that the words “for any other substantial cause” must be read with the word “requires”, which is set out at the commencement of the provision, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule would apply as noticed by the Privy Council. It is under these



circumstances such a power could be exercised. Therefore, when the first appellate court did not find the necessity to allow the application, we fail to understand as to how the High Court could, in exercise of its power under Section 115 C.P.C. have interfered with such an order, particularly when the whole appeal is not before the Court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would arise and not in any other circumstances. When the first appellate court passed the order on the application filed under Order 41 Rule 27 C.P.C., the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, we fail to understand as to how the High Court could interfere with such an order under Section 115 C.P.C.

In view of this decision also, it appears that in that case, the lower appellate court rejected the application recording a clear finding that the documents sought to be adduced as additional evidence is not at all necessary for just decision of the controversy between the parties. However, in exercise of revisional jurisdiction under Section 115 C.P.C. the High Court interfered with the same. In such circumstances, the Supreme Court held that when the appellate court clearly after considering the documents held that



the documents are not necessary for pronouncement of the judgment satisfactorily, the High Court could not have interfered with the same in revisional jurisdiction. In the present case at our hand, this is not the case. The Supreme Court in this decision nowhere has held that in each and every case, the application must be considered at the time of final hearing of the appeal or it must be considered prior to the hearing of the appeal. It depends on the facts of each case. When the appellate court clearly recorded a finding that the documents are not necessary for taking the same as additional evidence, the High Court should not interfere in exercise of revisional jurisdiction. It does not mean that if the lower appellate court has passed an order without assigning any reason for which the application is liable to be rejected, the High Court cannot interfere with the same. Now therefore, whether the documents sought to be adduced as additional evidence are necessary for the decision between the parties or that the documents are required by the lower appellate court for pronouncing the judgment satisfactorily as held by the Supreme Court in Union of India(supra) and A. Andichetiar(supra). The order passed by the Court below is unsustainable in the eye of law. Now, there is no universal law that the application must be considered at the time of final hearing but at the same time, there

is also no universal law that it must be decided prior to hearing of the appeal.

As has been submitted by the learned counsel for the petitioner, the hearing of the appeal is going on, therefore, this writ application is allowed. The impugned order is set aside and it is directed that the lower appellate court shall consider the application filed by the petitioner under Order 41 Rule 27 C.P.C. at the time of hearing of the appeal and decide the same in the judgment itself.

**(Mungeshwar Sahoo, J)**

Saurabh/-

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