

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5137 of 2016

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Kailash Chaudhary

.... Petitioner/s

Versus

Smt. Kaushalya Devi & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindeshwar Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 30-03-2016

Heard learned counsel Mr. Bindeshwar Prasad Singh for
the petitioner.

By the order dated 28.01.2016 the learned Additional
District Judge-VI, Aurangabad rejected the application filed by
the petitioner under Order XLI Rule 27 CPC in Title Appeal
No.38 of 2011/51 of 2015.

From perusal of the order, it appears that the court below
considered the fact that the petitioner has not mentioned that what
is the relevancy of the documents and what are those documents
and further has also considered the provision and principles for
consideration under Order XLI Rule 27 CPC and thereafter
rejected the application filed by the petitioner.

The Hon'ble Supreme Court in the case of **Union of
India Vs. Ibrahim Uddin & Anr, 2013 (1) PLJR 48 SC** has
held that the general principle is that the appellate court should not

travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The parties are not entitled as of right to the admission of such evidence. Thus, provision does not apply when on the basis of evidence on record the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the Court and is to be used sparingly.

In view of the above settled proposition of law and when the lower appellate court has exercised judicial discretion I do not find any merit in the application filed under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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