

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.20 of 2016**

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Yaswant Kumar & Ors

.... Appellant/s

Versus

Vikash Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar

For the Respondent/s : Mr.

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

2 01-08-2016

Heard learned counsel Mr. Arun Kumar for the
petitioners.

By the impugned order dated 23.02.2016 passed by
the learned Additional District Judge 1st, Jehanabad in Title
Appeal No. 01 of 2006 whereby the learned court below held that
the application filed under Order 41 Rule 27 of the CPC by the
plaintiff/respondent shall be considered at the time of writing
judgment of the suit.

The Hon'ble Supreme Court in the case of Union of
India Vs. Ibrahim Uddin 2013(01) PLJR 48, Supreme court has
held that application for taking additional evidence 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 recorded, the court reaches the
conclusion that additional evidence was required to be taken on

record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record considered and allowed prior to 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 in consequential/in-executable and is liable to be ignored.

In view of above settled proposition of law laid down by the Supreme Court, in my opinion, the order passed by the court below is in conformity of the decision of the Supreme Court. Therefore, I find no reason to interfere with the impugned order.

Accordingly, this Civil Misc. Application is dismissed.

(Mungeshwar Sahoo, J)

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