

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.912 of 2016**

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Ali Asgar & Ors

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr. Subhash Chandra Yadav- Gp15

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

3 17-11-2016

Heard the learned counsel, Mr. Parth Gaurav for the
petitioners and the learned A.C. to G.P.15 for the State.

Perused the impugned order dated 09.06.2016 passed by
7th Additional District Judge, Muzaffarpur in Title Appeal No.24
of 1995 whereby the Court below has rejected the application
under Order 41 Rule 27 C.P.C. filed by the plaintiff-appellant-
petitioner.

It appears that the Court below rejected only on the
ground of delay and that the plaintiff is trying to fill up the lacuna.
While rejecting the application under Order 41 Rule 27, the
learned Court below has not at all considered any of the provisions
as provided under Order 41 Rule 27 C.P.C.

The Hon'ble Supreme Court in the case of **Union of
India v. Ibrahim Uddin and another, (2012) 8 Supreme Court
Cases 148** has held at paragraph 41 and 42 that "the words "for



any other substantial cause” must be read with the word “requires” in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment. Whenever the appellate court admits additional evidence it should record its reasons for doing so. It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection.” In the present case, the Court below has not at all considered this settled principle of law.

In the said decision, the Supreme Court has also held that “the provisions of Section 107 C.P.C. as elucidated by Order 41 Rule 27, are clearly not intended to allow a litigant who has been unsuccessful in the lower court to patch up the weak parts of his case and fill up omissions in the court of appeal. Under Rule 27 clause 1(b), it is only where the appellate court ‘requires’ it (i.e. the appellate court finds it needful).... The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but ‘when on examining the evidence as it stands, some inherent lacuna or

defect becomes apparent.” Therefore, the Supreme Court held that the application should be considered at the time of hearing of the appeal. The lower appellate court in the present case at our hand has not at all considered all these aspects of the matter and in one line has rejected the application filed by the plaintiff-petitioner.

In the result, this civil miscellaneous application is allowed. The impugned order is set aside and the matter is remanded back to the court below for deciding the application under Order 41 Rule 27 C.P.C. according to law laid down by the Supreme Court at the time of hearing of the title appeal itself.

(Mungeshwar Sahoo, J)

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