

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.167 of 2016**

**In  
C.R. 53 of 2016**

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Md. Abdul Gani

.... .... Appellant/s

Versus

Jamurat Miyan & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Subesh Sharma

For the Respondent/s : Mr.

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

5 26-10-2016

Heard learned counsel for the petitioner.

2. Perused the impugned order dated 26.02.2016 passed by the learned District Judge, Saharsa in T.A. No. 05 of 2010, whereby the learned court below rejected the application filed by the petitioner under Order 41 Rule 27 C.P.C. seeking permission to adduce evidence.

3. From perusal of the impugned order, it appears that the court below has taken into account various decisions cited by both the parties and thereafter found that the petitioner is not entitled to fill up the lacunae in the appellate Court. The documents were available to the appellant earlier and that judgment can be pronounced without taking additional evidence.

4. The Hon'ble Supreme Court in the case of *Union of India Vs. Md. Ibrahimuddin* reported in **2013 (1) PLJR 48 SC** at

paragraph-25 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 Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. 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.

5. In view of the above settled principle of law when the court below saying that on the basis of the evidence and material available on record the judgment can be pronounced satisfactorily, there is no question of allowing the petitioner to adduce additional evidence under Order 41 Rule 27 arises. Therefore, I find no reason to interfere with impugned order passed by the lower appellate court. Accordingly, this civil miscellaneous application is dismissed.

Brajesh/-

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**(Mungeshwar Sahoo, J)**