

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 244 of 2017

Kanshi Prasad Tiwari (Dead) Through Lrs

1. Prakash Tiwari S/o Late Kanshi Prasad Tiwari, Aged About 44 Years
R/o Manjhapara, Kanker, Police Station & Tahsil Kanker, District
North Bastar Kanker (Chhattisgarh)
2. Prakhar Tiwari S/o Late Kanshi Prasad Tiwari Aged About 34 Years
R/o Manjhapara, Kanker, Police Station & Tahsil Kanker, District
North Bastar Kanker (Chhattisgarh)
3. Smt. Durga Tiwari W/o Late Kanshi Prasad Tiwari Aged About 70
Years R/o Manjhapara, Kanker, Police Station & Tahsil Kanker,
District North Bastar Kanker (Chhattisgarh)

---- **Petitioners**

Versus

State Of Chhattisgarh Through The Collector, District North Bastar
Kanker (Chhattisgarh)

---- **Respondent**

For Petitioners	:	Shri Vasant Zokarkar, Advocate
For Respondent /State	:	Shri S. Majid Ali, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/04/2017

(1) Petitioners/appellant's suit was dismissed by the trial Court finding no merit. They preferred appeal there-against before the first appellate Court. They also preferred application under Order 41 Rule 27 of the CPC before the first appellate Court.

(2) By the impugned order, application under Order 41 Rule 27 of the CPC has been rejected by the first appellate Court, against which, instant writ petition under Article 227 of the Constitution of India has been filed questioning the same.

(3) Learned counsel for the petitioners would submit that the first appellate court is absolutely unjustified in rejecting the application under Order 41

Rule 27 of the CPC before hearing the appeal on merits and, therefore, impugned order deserves to be set aside.

(4) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

(5) It is well settled that application under Order 41 Rule 27 of the CPC has to be heard after appeal is heard on merits and should be decided alongwith appeal. Application under Order 41 Rule 27 CPC cannot be heard before appeal is heard finally. {See ***Khemchand Mulchand Vs. Government of Madhya Pradesh, Bhopal and others***¹ }

(6) In the matter of ***State of Rajasthan Vs. T.N. Sahani & others***², Their Lordships of the Supreme Court have held that application under Order 41 Rule 27 CPC should be decided alongwith the appeal.

(7) In view of the aforesaid settled legal position, this court is of the opinion that the learned first appellate Court is absolutely unjustified in rejecting the application under Order 41 Rule 27 of the CPC before hearing the appeal on merits, therefore, impugned order is set aside and the said application is restored to the original file of the said Court .The first appellate Court is directed to hear & decide the application under Order 41 Rule 27 of the CPC along with appeal in accordance with law.

(8) Accordingly, the writ petition is allowed to the extent hereinabove leaving the parties to bear their own cost (s).

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

1 1972 MPLJ 524

2 (2001) 10 SCC 619