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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1579/2018 and CM APPL. 53487/2018**

SUNIL KUMAR BHATIA Petitioner
Through: Mr. Mritanjay Kr. Singh, Advocate
(M: 9582634444).
versus

SHIV KUMAR & ANR Respondents
Through: Mr. Manmohan Gupta, Advocate (M:
9891929381).

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **08.01.2020**

1. The present petition challenges the impugned order dated 26th July, 2018, by which four applications were decided by the Id. ADJ. The first was an application under Order 1 Rule 10 CPC, which was disposed of vide order dated 18th April, 2017 and the second application was under Order XLI Rule 27 CPC, dated 27th April, 2015, which was withdrawn. The third application was under Order XLI Rules 5, 18 and 27 CPC, dated 30th August, 2016. In the said application, the Id. ADJ came to the conclusion that the documents were pertaining to the years 1950, 1952, 1980 and 1990 and held that no reason was given as to why the documents were not filed earlier in the proceedings. Accordingly, the third application was dismissed. The fourth application was an application in which an order of a sub-judge dated 30th July, 1953, was sought to be placed on record. For the same reasons as given for the dismissal of the previous application, the fourth application was also dismissed. The Appeal is still stated to be pending.
2. The short question that has been raised in this case is whether the

application under Order XLI Rule 27 CPC can be heard separately and prior to the final hearing of the appeal. Ld. counsel for the Petitioner submits that in view of the settled law of the Supreme Court in ***Union of India v. Ibrahim Uddin & Anr.*** and ***M/s Eastern Equipment & Sales Limited v. ING Yash Kumar Khanna***, the application under Order XLI Rule 27 CPC ought to be heard along with the final hearing of the appeal and not at a prior stage.

3. The Supreme Court in ***M/s Eastern Equipment (supra)*** has observed that the purpose of filing of documents under Order XLI Rule 27 CPC is to see whether the Appellate Court considers the documents necessary for pronouncing the judgment in the appeal and, accordingly, the said application ought to be decided at the stage of final hearing of the appeal itself. Subsequently, in ***Ibrahim Uddin & Anr. (supra)*** the Supreme Court, after considering the entire case-law on the subject, concluded as under: -

“52. Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, 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, the application for taking additional evidence on record has been considered and allowed prior to the 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 inconsequential/inexecutable and is liable to be ignored.”

4. The above judgments have also been followed by a ld. Single Judge of this Court in ***Smt. Savitri Devi v. Smt. Gayatri Devi & Ors. [CM(M) 331/2007, decided on 11th December, 2009]*** wherein this Court held as under: -

“18. I, therefore, hold that the applications under Order 41 Rule 27 of the CPC ought to be heard along with the hearing of the appeal only and orders thereon ought not to be pronounced prior to the orders in the appeal. If the appellate court is of the view that additional evidence is to be permitted, the appellate court would either allow the evidence to be led before itself or remand the matter and in any case after the same would rehear the appeal. However, the same is no ground for dissecting the hearing.

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21. The Supreme Court in Eastern Equipment & Sales Ltd. ordered setting aside of the orders of the appellate court under Order 41 Rule 27 CPC made prior to the hearing of the appeal and directed the hearing of the applications afresh along with the hearing of the appeal. Following the same, it is directed that in spite of dismissal of all the aforesaid petitions, the orders on applications under Order 41 Rule 27 of the CPC made prior to the hearing of the appeal in all the aforesaid cases are set aside and the applications ordered to be considered afresh along with the hearing of the appeal.”

5. In view of the settled legal position, the petition is allowed to the extent that the applications for additional documents i.e., the third and the fourth applications, shall be considered by the Trial Court at the stage of final hearing of the appeal. Accordingly, the impugned order dated 26th July, 2018 is set aside in respect of these two applications. It is made clear that the observations in the impugned order shall not affect the final adjudication,

either of the appeal or the said applications, which shall be considered afresh.

6. The petition is allowed in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

JANUARY 08, 2020
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