

14.12.2022
Sl.No. 12
Ct.No.3
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT 441 of 2022

Ashalata Pal Since Deceased
Rep by Legal Heirs Kripamoy Pal and ors.
VS
Munshi Nurul Islam
With
CAN/1/2022

Mr. Shibasis Ghosh
Mr. Biswabrata Basu Mallick
Mr. Dwarik Nath Mukherjee
Mr. Manik Lal De

...for the appellants

Mrs. Shohini chakraborty
Ms. Prajaaini Das

...for the respondent

Re: CAN/1/2022

As the point involved is very short, we are disposing of this appeal dispensing with all formalities.

Mr. Ghosh, learned advocate appearing for the appellants is right in his submission that the documents in question which were not admitted in evidence by the trial court for the reasons advanced by it, could not have been introduced in the learned first appellate court by an application under Order XLI Rule 27 of the Code of Civil Procedure. Such a document does not satisfy any of the grounds on which the learned

appellate court could admit a document under Order 41 Rule 27.

However, the finding of the learned trial judge with regard to those documents could have been challenged in the memorandum of appeal before the learned first appellate court.

In those circumstances, the impugned judgment and order dated 8th June, 2022 cannot be sustained. We set it aside.

We give liberty to the respondent to file an additional memorandum of appeal before the learned first appellate court by 6th January, 2023.

The learned first appellate court shall proceed to hear out the appeal afresh and dispose of it preferably by 31st of March, 2023.

All points are kept open before the learned first appellate court.

The appeal and the connected application are disposed of.

(Biswaroop Chowdhury,J.) (I. P. Mukerji,J.)