



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 8262 of 2017

Narayan S/o Umakant Palikondawar

Versus

Wasudeo S/o Bapurao Komawar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri J.J.Chandurkar, Advocate for the petitioner.

Shri H.S.Chawhan, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 4th SEPTEMBER, 2023.

Heard.

2. In the present matter admittedly without deciding the application filed by the petitioner under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 for production of additional evidence, the learned Lower Appellate Court passed the impugned final judgment and order dated 12th October, 2017 in a Regular Civil Appeal No. 32 of 2011 for seeking eviction of petitioner/defendant.

3. The Hon'ble Supreme Court in the case of Jatinder Singh and another Vs. Mehar Singh and another¹ has held thus:

4. While deciding the second appeal, however, the High Court had failed to take notice of the application under Order 41 Rule 27 of the Code of Civil Procedure and decide whether additional evidence could be permitted to be admitted into evidence. In our view, when an application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure was filed by the appellants, it was the duty of the High Court to deal with the same on merits. That being the admitted position, we have no other alternative but to set aside the judgment of the High Court and remit the appeal back to it for a decision afresh in the second appeal along with the application for acceptance of additional evidence in accordance with law.

4. Thus, in view of the well settled principle of law in this regard I am of the opinion that there is no option than to set aside impugned judgment and order. Accordingly, I pass the following order.

- i. Writ Petition is partly allowed.
- ii. The judgment and order dated 12th October, 2017 passed by the learned District Judge-1, Pusad in Regular Civil Appeal No. 32 of 2011 is hereby quashed and set aside;
- iii. The appeal is restored back to its original number. Thereupon, the learned District Judge is

1 (2009) 17 SCC 465

directed to decide the appeal afresh after deciding the application under Order 41 Rule 27 read with Section 151 of Code of Civil Procedure, 1908.

iv. The respondent is directed to apply revival of the order dated 12th July, 2011 passed by the learned District Judge-2, Pusad in Regular Civil Appeal 32 of 2011, particularly clause (2) of the said order. If such application is moved, the learned Appellate Court may decide it in accordance with law.

v. The parties shall appear before the learned District Judge, Pusad on **25th September, 2023**. Thereupon, the learned lower Appellate Court shall decide the appeal within two months from the date of appearance.

[ANIL S. KILOR, J.]