

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMA No. 702 of 2023
+
CAN 1 of 2021

Kalimuddin Mondal(since deceased) substituted by
Abdul Gani Mondal and others
-vs-
Alauddin Mondal and others

For the appellants : Mr. Susenjit Banik

For the respondent nos. 1 to 3 : Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee.

Heard on : May 19, 2025.

Judgment on : May 19, 2025.

Sabyasachi Bhattacharyya, J.:

1. On consent of the parties, the appeal itself is taken up for hearing along with the connected application.
2. The present challenge has been preferred against an order whereby an application for review under Order XLVII Rule 1 of

the Code of Civil Procedure (in short “the Code”) filed by the respondents was allowed by the learned first appellate Judge.

3. Learned counsel appearing for the appellants points out that the review application arises in connection with a judgment and decree passed in the title appeal against a preliminary decree of partition.
4. In connection with the said appeal, an application for production of additional evidence under order XLI Rule 27 of the Code had been filed by the respondents, which was decided on merits and rejected by the appellate court simultaneously with the dismissal of the appeal on merits.
5. However, the learned first appellate Judge, by the impugned order, allowed the review application on the sole premise that the petition under Order XLI Rule 27 of the Code was disposed of “with audi-alteram-partem”. It was further recorded that “in order to cull out the truth, documentary evidence was required” and on such vague ground, the review application was allowed, thereby restoring not only the application filed under Order XLI Rule 27 of the Code but also the appeal itself, without addressing the merits of the appellate court’s judgment.

6. Learned counsel appearing for the respondents controverts such submissions.
7. On a bare perusal of the impugned order, we find that the learned appellate judge acted palpably *de hors* the law in allowing the review application.
8. In the original judgment, which was under review, the appellate court had dealt with the application of the present respondents under Order XLI Rule 27 of the Code on merits, thereby coming to the finding that the defendants/present respondents cannot at all be allowed to fill up the lacuna of their case at the appellate stage through the said application and the certified copy of the deed sought to be produced. It was further recorded that the other deed which the appellants therein (present respondents) were trying to bring into evidence were not connected with the suit property.
9. Thus, the dismissal of the application under Order XLI Rule 27 of the Code was squarely on merits.
10. Contrary to such fact, it was argued by the present respondents in connection with the review application that the said application for production of additional evidence was left un-adjudicated.

11. Although quoting the relevant portion of the initial judgment of the appellate court, the review court merely came to certain general and vague findings, such as “evasion of such process” (whatever that means) is certainly not wanted and that “evidence is required to cull out the truth with regard to any documentary evidence”. The review court further observed that “outside the periphery as coded in the legal avenue, the utter cry of justice demands to dive into the disputed matter-in-question and resolve the same by additional evidence or else in accordance with law”.
12. We find that the said observations in the impugned order are not only unintelligible but a fruitless exercise in jugglery with language, devoid of any substance whatsoever.
13. The learned first appellate court, while allowing the review application, did not even care to advert to the parameters of a review application under Order XLVII Rule 1 of the Code. In view of the learned first appellate Judge, at the first instance, having fully considered at length and on merits the application for production of additional evidence, the review court erred in law in allowing such application and reviving the application under Order XLI Rule 27 of the Code despite there being no

error apparent on the face of the judgment under review and/or discovery of any new matter or any like ground.

14. A matter of serious concern is that apart from dismissing the application for production of additional evidence, in its initial judgment, the first appellate court had decided the appeal itself on merits. The review court, surprisingly, did not touch such adjudication on merits but mechanically, as a matter of course, along with the application under Order XLI Rule 27 of the Code, also recalled the judgment passed in the first appeal on merits without applying the parameters of review to such judgment at all.
15. Such an approach is not only careless but should be avoided by judicial officers. In any event, without going further into the irregularities in the impugned order, we find that the parameters of review have not been satisfied at all. As such, the impugned order is contrary to law and as well as the applicable legal yardsticks in a review application.
16. In such view of the matter, FMA No. 702 of 2023 is allowed, thereby setting aside the impugned order, bearing Order No. 41 dated November 18, 2020 passed by the Additional District

Judge, Fourth Court at Berhampore, District- Murshidabad, in Miscellaneous (Review) Case No. 31 of 2015.

17. Consequentially, the application, being CAN 1 of 2021, pending in connection with the present appeal is also disposed of.

18. There will be no order as to costs.

19. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)