

Sl. No.12
12.03.2025
Suman
Ct. 30

CO 4058 of 2024

Sri Niranjana Ghosh and Ors.
Vs.
Sri Dayamoy Sarkar and Ors.

Mr. Arup Krishna Das
Mr. Sanjoy Ghosh
..for the petitioners

Mr. Uttiya Roy
Ms. Anima Maiti
..for O.P. No.1.

1. The present revisional application has been preferred against Order No.38 dated 26.03.2019 passed by the learned District Judge, Bardhaman in Title Appeal No. 74 of 2015 and Order No.73 dated 23.08.2024 passed by the learned Additional District Judge, 4th Court at Purba Bardhaman in Title Appeal No.74 of 2015 whereby application for adducing Additional Evidence under Order 41 Rule 27 filed by the added Appellants has been rejected on the ground of earlier rejection of a similar Application filed by the original Appellant.
2. Vide the order under challenge, the District Judge, Burdwan considered the case of both the parties and held as follows:-

*“From the impugned application it appears that the appellant has prayed for adducing additional evidence **but no specific evidence***

or document has been mentioned in the petition sought to be adduced as additional evidence. The appellant has simply prayed in the petition that he wants to adduce necessary documents regarding the suit properties. From the four corners of the petition no explanation has been advanced on behalf of the appellant as to what prevented him from producing the aforesaid documents before the trial court as I have mentioned earlier that instant appeal has been preferred on 18.12.2015 and the respondent entered appearance in the appeal on 01.03.2016. Not only that **L.C.R. goes to show that no such case was ever made out on behalf of the appellant in the written statement filed on his behalf before the Ld. Trial Court.**

On plain reading of the provision laid down under Order 41 Rule 27 it appears that said provision suggest that no party to an appeal shall be entitled to adduce additional evidence except in the circumstances mentioned in sub-clauses (a) (aa) and (b) of the said provision. The appellant in the instant case has not been able to establish that his case falls under any of the aforesaid provision of Law enabling him to be entitled for adducing additional evidence.

Therefore, the petition so filed on behalf of the appellant lacks in merit and thus, rejected on contest but without any order as to cost.”

3. Both the parties have filed their respective written notes of argument.
4. **Order 41 Rule 27 lays down as follows:-**

“27.Production of additional evidence in appellate court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

(a) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at

the time when the decree appealed against was passed, or

(b) The appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.”

5. The contention of the petitioners herein is that several title suits have been instituted between the parties and that in the related title suit in the present case, all other necessary parties have not been added and the plaintiff by suppression of the said facts has obtained a decree behind the back of the said defendants.
6. Learned counsel for the petitioners has relied upon a judgment of the Supreme Court reported in **AIR 2008 Supreme Court 2360 (M/s. Eastern Equipment and Sales Ltd. vs. ING. Yash Kumar Khanna)** wherein the Court held that the Appellate Court ought to have taken the appeal along with the application for acceptance of additional evidence. The Court setting aside the order of the Appellate Court directed the Trial Court to decide the pending appeal along with the application

under Order 41 Rule 27 of the Code of Civil Procedure.

7. The relevant paragraph is quoted below:-

“5. We have heard learned counsel for the parties and after considering the facts and circumstances of the present case, we are of the view that in order to decide the pending appeal in which the application under Order 41 Rule 27 of the Code of Civil Procedure was filed ought to have been by the appellate Court along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. In that view of the matter and without going into the merits as to whether the application under Order 41 Rule 27 of the Code of Civil Procedure was rightly rejected by the Appellate Court as well as by the High Court, we set aside the order of the High Court as well as of the appellate Court rejecting the application under Order 41 Rule 27 of the Code of Civil Procedure and we direct that the appellate Court shall decide the pending appeal along with the application under Order 41 Rule 27 of the Code of Civil Procedure on merits within a period of three months from the date of supply of a copy of this order to the appellate court. The appeal is allowed to the extent indicated above. There will be no order as to costs.”

- 8.** On the other hand, learned counsel for the opposite party has submitted that the Appellate Court was right in rejecting the said application on the ground that self-same prayer by the original appellant was rejected.
- 9.** It is further submitted that appellants who were added parties could not have a case different from that of the original appellant. It is further stated

that as such, the said prayer was barred by the principles of res judicata.

10. It is further submitted by the opposite party that none of the grounds as laid down under the provision of Order 41 Rule 27 of the Code of Civil Procedure was specified in the petitioners' application and the appellate Court rightly dismissed the said application.
11. In support of his contention, the opposite party has relied upon the judgment of the Supreme Court reported at ***MANU/SC/0155/2014 (Lekhraj Bansal Vs. State of Rajasthan and Ors.) and FMAT 419 of 2015*** of the Division Bench of Calcutta High Court ***(Ratan Kumar Bera vs. Jyotirindra Nath Bera)***.
12. In the said judgments, in support of the opposite parties' argument, the prayer was also barred by res-judicata.
13. Considering the submission made by the parties and the materials on record and the judgments relied upon along with the order under challenge, this Court finds that the learned District Judge has specifically observed that the prayer of the appellant, petitioner herein praying for additional evidence **did not specify as to what evidence or documents that was to be intended to be adduced as additional evidence.**

14. A prayer had been made for being permitted to adduce additional evidence in respect of certain documents regarding the suit properties.
15. It is further noted that there was no explanation in the petition stating as to what prevented them from producing the said documents before the Trial Court. It has been further noted by the Court that **the LCR shows that no such case was ever made out on behalf of the appellant in the written statement filed before the Trial Court.**
16. As such, this Court finds that the order under challenge is a well reasoned order, in accordance with law and thus, requires no interference.
17. Considering the observation of the learned District Judge that no such case for production of the additional evidence or documents was made out by the petitioner appellant in his written statement before the trial Court, no liberty can be granted to the petitioner herein in view of the fact that he cannot pray for any evidence/relief beyond his pleadings.
18. **The revisional application is thus dismissed.**
The order under challenge is hereby affirmed.
19. All connected applications, if any, stand disposed of.
20. Interim order, if any, stands vacated.

21. Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Shampa Dutt (Paul), J.)