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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-4977-2017 (O&M)

Date of Decision : 12.05.2025

Pirithi & Anr

... Petitioner(s)

Versus

Gram Panchayat, Gagarpur & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajinder Goel, Advocate for the petitioners.

Mr. Vineet Chaudhary, Advocate for
Mr. J.P. Sharma, Advocate for respondent No.1.

None for respondent Nos.2 to 4.

Service of respondent Nos.5 to 10 dispensed with
vide order dated 15.01.2018.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 22.05.2017 whereby the application filed by the petitioners under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence has been dismissed.

2. Learned counsel for the petitioners would contend that the application filed by the petitioner before the First Appellate Court under Order 41 Rule 27 of CPC for leading additional evidence ought to have been decided at the time of final hearing of the main appeal. In support of his contention he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Union of India Vs. Ibrahim Uddin & Anr. [2012 (4) RCR (Civil) 727]**.

3. *Per contra* the learned counsel for respondent No.1 has contended that despite the appeal remaining pending for a period of four years, the application was not filed and when the case was fixed for arguments, the present application was filed.

4. I have heard the learned counsel for the parties.

5. Hon'ble Supreme Court in the case of **Ibrahim Uddin** (supra) has held as under :

“Stage of Consideration :

38. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh & Ors., AIR 1951 SC 193; and Natha Singh & Ors. v. The Financial Commissioner, Taxation, Punjab & Ors., AIR 1976 SC 1053).

39. *In Parsotim Thakur & Ors. v. Lal Mohar Thakur & Ors.*, AIR 1931 PC 143, it was held :

“The provisions of S.107 as elucidated by O.41, R.27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of appeal. Under R.27, Cl.(1) (b) it is only where the appellate Court “requires” it (i.e. finds it needful). The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent”, it may well be that the defect may be pointed out by a party, or that a party may move the Court to apply the defect, but the requirement must be the requirement of the court upon its appreciation of evidence as it stands. Wherever the Court adopts this procedure it is bound by R. 27(2) to record its reasons for so doing, and under R.29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified. The power so conferred upon the Court by the Code ought to be very sparingly exercised and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case...” (Emphasis added)

(See also: Indirajit Pratab Sahi v. Amar Singh, AIR 1928 P.C. 128)

40. *In Arjan Singh v. Kartar Singh & Ors. (supra)*, this Court held :

“.....If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it was non-existent..... The order allowing the appellant to call the additional evidence is dated 17.8.1942. The appeal was heard on 24.4.1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the court required to be filled up for pronouncing the judgment” (Emphasis added)

41. Thus, from the above, it is crystal clear that 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 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, 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.

In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored.”

6. It is trite that an application under Order 41 Rule 27 of CPC for leading additional evidence ought to be decided at the time of final decision of the appeal.

7. In view of the above, the present revision petition is allowed and the order dated 22.05.2017 is set aside. The application under Order 41 Rule 27 of CPC for additional evidence shall be considered and decided by the First Appellate Court at the time of final hearing of the main appeal, in accordance with law.

8. Disposed off accordingly. Pending applications, if any, also stand disposed off.

12.05.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO