2026:AHC:90283

A.F.R.
Reserved On: 06.02.2026
Delivered On: 23.04.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 1527 of 2025

Bhupendra Singh

…..Petitioner(s)

Versus

Smt. Namrata Saraswat

…..Respondent(s)

Counsel for Petitioner(s)	:	Ritvik Upadhya
Counsel for Respondent(s)	:	Bablu Singh, Vishakha Pande

Court No. - 36

HON'BLE MANISH KUMAR NIGAM, J.

1. This petition has been filed challenging the order dated 04.01.2025 passed by the Additional District Judge, Court No. 12, Ghaziabad in Civil Appeal No. 117 of 2010, Smt. Namrata Saraswat vs. Bhupendra Singh, rejecting the application filed by the defendant-respondent (petitioner), under Rule 27 of Order XLI C.P.C.

2. Brief facts of the case are that plaintiff-respondent (hereinafter referred to as ‘respondent’), Smt. Namrata Saraswat, instituted Original Suit No. 1501 of 1998, Smt. Namrata Saraswat vs. Sri Bhupendra Singh, Advocate, in the court of Civil Judge, Senior Division, Ghaziabad for a decree of specific performance of an agreement to sell dated 14.10.1992

executed by the defendant-petitioner (hereinafter referred to as ‘petitioner’), in favour of the respondent of the property in question. It was pleaded *inter alia* in the plaint that on 13.08.1990 petitioner was allotted residential plot (property in dispute) by the Ghaziabad Development Authority, Ghaziabad, and the petitioner on 15.10.1992 executed an agreement to sell in favour of the respondent for a sum of Rs.43,620/-. Rs. 43,000/- was paid in advance as part payment of the consideration and respondent was put in possession over the property in dispute. In the said agreement for the sell, it was provided that the sale deed was to be executed by the petitioner within one month after first getting the lease deed executed in his favour from the Ghaziabad Development Authority through Adhivakta Sahakari Awas Samiti Limited (hereinafter referred to as ‘Samiti’) and thereafter obtaining the permission to sell the plot in question from the Samiti. After being noticed, the petitioner appeared and contested the suit by filing written statement, wherein the petitioner pleaded that after the execution of the lease deed in his favor by the Ghaziabad Development Authority, defendant was declared to be sub-lessee and the agreement to sell the property in dispute was under misconception. The permission sought by the petitioner to transfer the plot in favour of the respondent was refused by the Samiti. It was also pleaded that being sub-lessee, the petitioner was not competent to transfer the plot and as such the agreement to sell was not enforceable. Both the parties led their evidence to prove their case. The two important issues apart from other framed by the trial court, on the basis of pleadings of the parties, were whether the respondent as per the facts of

the case, was entitled for decree of specific performance and whether the respondent was ready and willing to perform his part of the agreement. The petitioner though filed his evidence paper No. 22-Ga, but thereafter remained absent and his opportunity to lead evidence was closed. The trial court decided the issue of willingness and readiness against the respondent and the suit filed by the respondent was partly decreed by the judgment and decree dated 18.09.2010 passed by Civil Judge, Senior Division Ghaziabad for refund of earnest money along with the interest, but the decree of specific performance was refused. Being aggrieved, the respondent filed first appeal under Section 96 C.P.C before the Additional District Judge, Ghaziabad being Civil Appeal No. 117 of 2010, Smt. Namrata Saraswat Vs. Shri Bhupendra Singh. The appeal filed by the defendant was allowed by the appellate court on 09.3.2011. The petitioner filed an application under Order XLI Rule 21 C.P.C for restoration of appeal, which was rejected by the court below by order dated 19.10.2011. The order dated 19.10.2011 was challenged before this court in FAFO No. 42 of 2012, which was allowed by this Court by judgment and order dated 01.11.2022, and the matter was remitted to the first appellate court to decide the appeal within a period of six months. After the remand, the matter was taken by the first appellate court, and an application was filed by the petitioner for framing additional issue as to non-joinder of necessary party. The said application was rejected by the lower appellate court by order dated 10.04.2023. On 24.07.2023, the petitioner moved an application, paper No. 153- Ga, under Order XLI Rule 27 for taking additional evidence in the said appeal, to which

objections were filed by the respondent. Lower appellate court by order dated 19.07.2024 rejected the application No. 153 Ga. Order dated 19.07.2024 was challenged by the petitioner before this Court by filing a petition under Article 227 of the Constitution of India being Matters Under Article 227 No. 11479 of 2024. The petition under Article 227 of the Constitution of India was allowed by this Court vide judgment and order dated 18.09.2024 directing the appellate court to decide the application afresh considering the judgment of Hon'ble Supreme Court in case of **Sanjay Kumar Singh Vs. State of Jharkhand; (2022) 7 SCC 247.** The lower appellate court, i.e. Additional District Judge, Ghaziabad, after remand by judgment and order dated 04.01.2025, rejected the application filed by the petitioner under Order XLI Rule 27 of C.P.C. Hence the present writ petition.

3. Contention of Sri Ritvik Upadhya, learned counsel for the petitioner is that the documents sought to be produced by the petitioner had a direct and significant bearing with the controversy to be decided in the appeal. It has been submitted by learned counsel for the petitioner that the lower appellate court ought to have admitted the evidence which was sought to be produced by the petitioner as an additional evidence, as the same was directly connected with the controversy to be decided in appeal and was necessary to be considered for rendering correct judgment. Learned counsel for the petitioner relied upon judgments of the Supreme Court in cases of :-**Venkata Seshavatharam & Ors Vs. Chapalamadugu Venkata Rangayya & Ors.;(1946) 14 ITR 722, Arjan Singh Alias Puran Vs. Kartar Singh & Ors; 1951 SCC 178, K. Venkataramiah Vs. Seetharama Reddy &**

Ors.;1963 SCC OnLine SC 216, Deputy Registrar, Co-operative Societies, U.P., Lucknow Vs. Chaudhari Sarfaraz-un-Zaman & Anr.; 1971 SCC Online All 367, State Bank of India Vs. M/s Ashok Stores & Ors.;1981 SCC OnLine Ori 69, Akash Ganga Builders & Engineers (P) Ltd. Vs. G.P. Seth HUF & Anr., 1999 (50) DRJ (DB), K.R. Mohan Reddy Vs. Net Work INC;(2007) 14 SCC 257, Sangram Singh Vs. Election Tribunal, Kotah & Anr.; (1955) 1 SCC 323, Chinnamal & Ors. Vs. P. Arumugham & Anr.;(1990) 1 SCC 513, Dondapati Narayana Reddy Vs. Dugireddy Venkatanarayana Reddy & Ors.;(2001) 8 SCC 115, Commissioner Mysore Urban Development Authority Vs. S.S. Sarvesh; (2019) 5 SCC 144, Sanjay Kumar Singh Vs. State of Jharkhand; (2022) 7 SCC 247.

4. *Per contra*, Ms. Vishakha Pandey, learned counsel for the respondent submitted that the application filed by the petitioner under Order XLI Rule 27 of C.P.C. was not maintainable as none of the conditions contemplated under Sub-rule (1) of Rule 27 of Order XLI existed. Learned counsel further contended that it is for the court to decide whether any evidence is required to be produced as additional evidence for pronouncement of judgment or for any other sufficient cause, and it is not open for the party applying for additional evidence to direct the court to consider the evidence for the said purpose. It has also been submitted by learned counsel for the respondent that the court below has rightly rejected the application filed by the petitioner after holding that the evidence was not necessary for the controversy in dispute. Lastly, it was submitted by Ms. Vishakha Pandey, learned

counsel appearing for the respondent, that since opportunity to lead evidence of the defendant was closed by the trial court, therefore, there was no evidence on behalf of the petitioner before the trial court, and as such, in absence of any evidence before the trial court, additional evidence could not be filed by the petitioner under Order XLI Rule 27 C.P.C as the word "additional evidence" presupposes the existence of some evidence. It has been further submitted that the expression “additional evidence” implies leading of some evidence by the party and only in such cases the petitioner may apply to produce additional evidence and not otherwise.

5. Learned counsel for the respondents relied upon the judgment in cases of:- **Kessowji Issur Vs. Great Indian Peninsula Railway Company; [1907 SCC Online PC 9], Parsotim Thakur & Others Vs. Lal Mohar Thakur & Others ; [1931 SCC Online PC 35], Arjan Singh @ Puran Vs. Kartar Singh & Others [1951 SCC 178], State of U.P. Vs. Manbodhan Lal Srivastava ; [1957 SCC Online SC 4], The Municipal Corporation Greater Bombay Vs. Lala Pancham &Others; [AIR 1965 SC 1008].**

6. Before considering the rival submissions of the party, it would be appropriate to note the relevant statutory provisions for adducing the additional evidence.

7. Normally, the evidence whether oral or documentary is filed before the trial court. Rule 14 of Order VII of CPC provides, where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in

court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. Sub-rule (2) of Rule 14 of Order VII provides, where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. Sub-rule (3) of Rule 14 provides, a document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

8. Similarly, Order VIII, Rule 1-A, (inserted by Act 46 of 1999, w.e.f. 01.07.2002), where the defendant bases his defence upon a document or relies upon any document in his possession or power in support of his defence or claim for set-off or counterclaim, he shall enter such document in a list and shall produce it in court when the written statement is presented by him and, at the same time, deliver the document and a copy thereof to be filed with the written statement. Sub-rule (2) of Rule 1-A of Order VIII provides, where any such document is not in possession or power of the defendant, he shall, wherever possible, state in whose presence or power it is. Sub-rule (3) of Rule 1-A provides a document which ought to be produced in court by the defendant under this rule, but, is not so produced, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

9. Order XIII, Rule 1 of C.P.C. provides parties or their pleader shall produce, on or before the settlement of issues, all the documentary evidence in original where the copies thereof

have been filed along with plaint or written statement. Sub-rule (2) of Order XIII provides, the court shall receive the documents so produced, provided they are accompanied by an accurate list prepared in such form as the High Court directs.

10. Order XVI Rule 1 provides, on or before such date as the court may appoint, and not later than fifteen days after the date on which issues are settled, the parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in court. Sub-rule (3) of Rule 1 of Order XVI provides that the Court may, for reasons to be recorded, permit a party to call, whether by summoning through court or otherwise, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for omission to mention the name of such witness in the said list. Rule 1-A of Order XVI provides, subject to the provisions of sub-rule (3) of Rule 1, any party to a suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents.

11. Thus, from the reading of the aforesaid provisions of the C.P.C, it is clear that normal rule is that evidence, whether oral or documentary, has to be produced before the trial Court in accordance with the provisions of the C.P.C referred above.

12. Section 107 C.P.C. provides for powers of appellate court. Sub-section 1(d) of Section 107 authorizes the appellate court to take additional evidence or to require such evidence to be taken. Section 107 of C.P.C. is quoted as under:-

"107. Powers of Appellate Court.-(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as maybe the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein."

13. The power to take additional evidence by the appellate court is subjected to such conditions and limitations as may be prescribed. Section 107(1)(d) enables the appellate court to admit additional evidence, Order XLI Rule 27 furnishes grounds on which additional evidence may be admitted. Order XLI Rule 27 of C.P.C. is quoted as under:-

"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) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

14. The provisions of Rule 27 of Order XLI shall be read with Section 107(1)(d). The underlying object of these provisions is

to permit parties to adduce complete evidence in support of their case and to allow such evidence which would completely adjudicate the dispute between the parties and would do full justice to the cause.

15. Sub-rule (1) of Rule 27 begins with a negative condition. The words (“the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court”) clearly indicate the legislative intent. It also lays down a general rule that an appellate court should decide an appeal on evidence led by the parties before the trial court and should not admit additional evidence in appeal. Sub-rule (1) of Rule 27 should be read with clause (a) of sub-section (1) of Section 107. The said clause also require the appellate court “to determine a case finally”. Rule 24 of Order XLI, too, enjoins the appellate court to determine the case finally where evidence on record is sufficient for such determination. Thus, normally an appellate court should not allow additional evidence to be produced and should decide an appeal on the basis of material on record. Sub-rule (1) of Rule 27 of Order XLI, having laid down a general rule as to leading of additional evidence in negative form, proceeds to carve out exceptions and enumerate circumstances in which the appellate court is allowed to admit additional evidence under clause (a), (aa) or (b) of sub-rule (1) of Rule 27.

16. Constitution Bench of the Supreme Court in case of **K. Venkataramaih v. Seetharama Reddy (supra)** while interpreting Section 107 read with sub-rule (1) of Rule 27 of Order XLI, stated, *"Section 107 of the Code of Civil Procedure empowers the appellate court 'to take additional evidence or to require*

such evidence to be taken, "subject to such conditions and limitations as may be prescribed'. Rule 27 of Order XLI of the Code of Civil Procedure prescribes the conditions and limitations in the matter. The rule first lays down that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. It then proceeds to lay down two classes of cases where the appellate court may allow additional evidence to be produced."

Note- Clause (aa) of sub-rule (1) of Rule 27 of Order XLI was added by Act 104 of 1976 w.e.f 01.02.1977.

17. Order XLI, Rule 27, as enacted originally, had only two sub-clauses, i.e. 1 (a) and (b). Sub-clause (aa) was added by Act 104 of 1976 w.e.f 01.02.1977.

18. Before proceeding further, it would be relevant to look into the provisions contained in Code of Civil Procedure, 1882. Section 568 and Section 623 of C.P.C., 1882 are quoted as under:

> *“568. 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 against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, 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 to be produced, or document to be received, or witness to be examined.*
>
> *Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.*
>
> *623. Any person considering himself aggrieved—*
>
> *(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;*
>
> *(b) by a decree or order from which no appeal is hereby allowed; or*

(c) by a judgment on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him..."

19. Rule 27 of Order XLI enumerates circumstances wherein an appellate court may admit additional evidence, whether oral or documentary, in appeal. They are as under:

(i) where the lower court has improperly refused to admit evidence which ought to have been admitted; or

(ii) where such additional evidence was not within the knowledge of the party or could not, after exercise of due diligence, be produced by him at the time when the lower court passed the decree or made the order, or

(iii) where the appellate court itself requires such evidence either (a) to enable it to pronounce judgment; or (b) for any other substantial cause.

20. Clauses (a), (aa) and (b) of sub-rule (1) of Rule 27 are different; they deal with different situations and operate in different fields.

21. So far as clause (a) is concerned, it covers cases where the lower court has improperly refused to admit evidence which ought to have been admitted.

22. Clause (aa), as inserted by the Amendment Act, 1976, applies to production of additional evidence which was not within the knowledge of the party, or could not, even after

exercise of due diligence, be produced by him at the time when the lower court passed the decree or made the order.

23. Clause (b) deals with totally different situation. Here, it is the court, i.e. the appellate court which requires additional evidence to be allowed on one of the two grounds, viz.

(i) for pronouncement of judgment; or

(ii) for any other substantial cause.

In either case, it is the requirement of the appellate court. Nothing more but nothing less.

24. Conditions precedent for application of clause (a) and clause (aa) of sub-rule (1) of Rule 27 of Order XLI are different from that of clause (b). In the event, the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand, if clause (b) to sub-rule (1) of Rule 27 of Order XLI C.P.C. is to be taken recourse to, the appellate court is bound to consider the entire evidences on record and come to an independent finding for arriving at a just decision; adduction of additional evidence as has been prayed by the appellant or respondent was necessary in an appeal.

25. In the present case, we are mainly concerned with clause (b) to sub-rule (1) of Rule 27 of Order XLI C.P.C. Clause (b) covers cases wherein the appellate court may itself require additional evidence (production of document or examination of witness) either (i) for pronouncement of judgment; or (ii) for any other substantial cause. “Requires” means “Needs” or “finds needful”. As seen above, even under the old Code of

1882, Section 562 enabled the trial court to produce additional evidence, if the appellate court required.

26. The privy council in **Parsotim Thakur and others Vs. Lal Mohar Thakur and others; 1931 SCC Online PC 35** has held at page No. 87 as under:-

> *"In their Lordships' opinion this additional evidence ought not to have been admitted. If the respondents desired to give evidence as to the thumb-impression they had ample opportunity to do so in the trial Court. The provisions of Sect. 107, Civil Procedure Code, as elucidated by O. 41, R. 27, are clearly not intended to allow a litigant who has been unsuccessful in the the lower Court to patch up the weak parts of his case and fill up omissions in the Court of Appeal.*
>
> *Turning to the provisions of R. 27, Cl. (1) (a) has no application in the present case. Under Cl. (1) (b), it is only where the appellate Court "requires" it, (i.e., finds it needful) that additional evidence can be admitted. It may be required to enable the Court to pronounce judgment or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. 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." This is laid down in the most positive terms by Lord Robertson In Kessowji Issur v. G.I.P. Ry [1907 SCC Online PC 9]. He was dealing with the words of Sect. 568 of the Code of 1882, but they are substantially the same as those of 0. 41, R. 27, of the present Code. It may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the 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. Their Lordships regret to find that so far as the record discloses, none of these conditions was complied with in the present case."*

27. The Supreme Court in **Arjan Singh @ Puran Vs. Kartar Singh and others; 1951 SCC 178** referring to above

mentioned privy council decision, stated: "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."

28. In case of **K. Venkataramiah Vs. Seetharama Reddy (supra)**, the Supreme Court held the ability to pronounce a judgment does not mean or confine to the ability to pronounce any judgment, but the ability to pronounce a judgment satisfactory to the mind of the court delivering or pronouncing it. An appellate court may be able to pronounce judgment on the basis of material on record, but may still consider additional evidence to pronounce correct, satisfactory, or effective judgment. Additional evidence may be allowed in such cases.

29. However, in case of **The Municipal Corporation of Greater Bombay Vs. Lala Pancham and others; AIR 1965 SC 1008,** it has been held by the Supreme Court that the appellate court cannot allow additional evidence only for the purpose of pronouncing judgment in a particular way.

30. The appellate court may admit additional evidence, "for any other substantial cause." The words "for any other substantial cause" should be construed liberally and they do not need to confine on the rule of *ejusdem generis* with the cause stated in earlier part of the provision,(i.e.,"to pronounce"). The words ("for any other substantial cause") confer very wide discretion on the appellate court to admit additional evidence where end of the justice require admission of such evidence. Normally, the test applied for the purpose is the question whether the material, i.e. additional evidence, would alter the

decision that was rendered without the material. The word "substantial" indicates that it must positively point to the fact that the record on the basis of which the suit has been decided was incomplete in the sense that had this material "additional evidence" been before the court, the result would have been inevitably been different.

31. In case of **K. Venkataramiah (supra)**, Supreme Court clearly and univocally held that requirement must be of the appellate court alone but the power to allow additional evidence in appeal has to be exercised cautiously, sparingly, and only in exceptional circumstances. The requirement must be the requirement of the court and not that of a party who had lost the litigation. Additional evidence cannot be allowed to enable the applicant to fill in lacuna or to strengthen his case in appeal.

32. Another question which has to be considered is when the application for additional evidence may be decided. Rule 27(1) of Order XLI contemplates three different situations which have been enumerated in separate clauses (a), (aa), and (b). So far as clause (a) is concerned, it covers cases lower court has refused to admit evidence which ought to have been admitted. The applicant may file an application before the appellate court for production of evidence said to have been wrongly and erroneously refused by the lower court. Such an inquiry is independent of hearing of the main matter i.e. appeal and hence the question can be decided by the appellate court on the basis of the complaint made or grievance raised by the applicant in the light of relevant provision of law and it can pass appropriate order in accordance with law.

33. Clause (aa) gets attracted in those cases where the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, (I) such evidence was not within his knowledge or (II) could not be produced by him in lower court. In support of this clause, the limited inquiry the appellate court is required to make is whether the applicant is right in his submission that he had exercised due diligence and in support of such due diligence, either he could not come to know of such evidence, or he could not produce it before the lower court. Onus of proof is on the applicant to satisfy the court as to the applicability of clause (a) or (aa). If applicant is able to convince the court of his claim, the appellate court would allow the application.

34. Clause (b) applies in those cases where the court, i.e., the appellate court requires additional evidence to enable it either (I) to pronounce judgment, or (II) for any other substantial cause. Under clause (b), the requirement is the requirement of the court and such requirement should be either of the two purposes specified in the clause, i.e, either for pronouncement of judgment or for any other substantial cause. Such an exercise is possible when the appeal is taken up for hearing. Under clause (b), additional evidence can be admitted by the appellate court when it requires such evidence for the purposes mentioned in clause (b), which can be ascertained by the court on examining evidence produced and material placed by the parties on record and the need or necessity of additional evidence in the form of a document or oral testimony.

35. In my view, the prayer for admission of additional evidence under clause (b) cannot be decided before the appeal

is taken up for hearing. In case the power as contemplated under clause (b) is exercised before hearing of the appeal, then the appellate court has to look into evidence and material placed before the court at an intervening stage, which in my opinion is not practical as the exercise of examining evidence will have to be taken by the appellate court, firstly at the time of considering the application under Order XLI Rule 27(1)(b) and thereafter again at the time of hearing of the appeal on merits. The proper course is to consider the application under Order XLI Rule 27(1)(b) at the time of hearing of appeal when the court applies its mind and examine the evidence on record and if it comes to the conclusion that evidence is required, the application may be decided at that stage.

36. Elaborating his submissions, Sri Ritvik Upadhya, learned counsel for the petitioner submitted that the lower appellate court has erred in law in rejecting the application filed by the petitioner under Order XLI, Rule 27 C.P.C. It has also been submitted by learned counsel for the petitioner that in view of judgment in case of Sanjay Kumar Singh (supra), and judgment of this Court dated 18.09.2024 in Matters under Article 227 No. 11479 of 2024, the court below has not recorded any reason for rejecting the application.

37. It has been further submitted that the reasons recorded by the court below are sketchy and cannot be said to be passed in compliance of order dated 18.09.2024 passed in Matters under Article 227 No. 11479 of 2024 and Sanjay Kumar Singh (supra).

38. Refuting the submissions of learned counsel for the petitioner, Ms. Vishakha Pandey, counsel appearing for the respondent, submitted that as per sub-rule (2) of Rule 27 of Order XLI, the appellate court has to record the reasons in case the appellate court is taking additional evidence on record, and by any stretch of imagination, it cannot be said that for rejecting an application under Order XLI Rule 27 C.P.C, reasons are to be recorded. Learned counsel for the respondent further submitted that in case of Sanjay Kumar Singh (supra) there was no dictum of the Supreme Court for recording of reasons for rejecting an application under Order XLI, Rule 27 C.P.C.

39. The Supreme Court in case of **Sanjay Kumar Singh (supra)** has held in paragraph Nos. 4 to 9 as under:-

> *"4. At the outset, it is required to be noted that before the Reference Court as well as before the High Court, the only evidence produced on record was the sale deed dated 29-12-1987 which was rejected from being considered. Hence, as such, there was no other evidence/material on record to arrive at a fair market value for the acquired land. Therefore, before the High Court, the appellant filed an application under Order 41 Rule 27 CPC for additional evidence to bring on record the sale deeds and certified copy of the judgment and award passed by the Reference Court which, according to the appellant, would have a direct bearing on the determination of the fair market value of the acquired land.*
>
> *5 . The High Court has rejected the said application by observing that the application does not satisfy the requirement of Order 41 Rule 27 read with Section 96 CPC. The High Court has also observed that the appellant has failed to establish that notwithstanding exercise of due diligence, such additional*

evidence was not within his knowledge and could not after exercise of due diligence be produced before the courts below.

6. However, the High Court while considering the application for additional evidence has not appreciated the fact that the documents which were sought to be produced as additional evidence might have a bearing on determination of the fair market value of the acquired land. It is to be noted that except the sale deed dated 29-12-1987, which was rejected by the courts below, no further evidence was on record to determine the fair market value of the acquired land. It was a case of awarding of fair compensation to the landowner whose land has been acquired for public purpose. It cannot be disputed that the claimant whose land is acquired is entitled to the fair market value of his land.

7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

8. As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar, 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. It is further observed that 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.

9. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that while considering the application for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration i.e, whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed 29-12-1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court."

40. In the case of Sanjay Kumar Singh (supra), the Supreme Court has laid down that normal rule is that additional evidence should not be permitted to be taken before the appellate court, and the provisions of

sub-Rule (1) of Rule 27 of Order XLI are exceptions to the general rule. The judgment in case of Sanjay Kumar Singh (supra) has been given on peculiar facts of the case and there is no dispute to the proposition of law as laid down by the Apex Court that additional evidence can be accepted under clause (b) of sub-Rule (1) of Rule 27 of Order XLI, but the requirement is of the court so as to pronounce the judgment on the material available on record or not.

41. The Supreme Court in the case of Arjun Singh @ Puran (supra) held "the discretion to receive and admit additional evidence is not an arbitrary one, but a judicial one circumscribed by the limitations specified under Order XLI Rule 27 of the C.P.C."

42. Further, in the case of **K. Venkataramiah**(supra), the Supreme Court was of the view that courts of appeal should not overlook the provisions of clause 2 of Rule and should record their reasons for admitting additional evidence. The Supreme Court further held, we are not prepared, however, to accept the contention of counsel for the appellant that omission to record reason vitiates the admission of evidence. (para No. 13)

43. Though this Court in earlier round of litigation by order dated 18.9.2024 has set aside the earlier order dated 19.07.2024 passed by the appellate court on the ground that no reasons have been recorded by the appellate court for rejecting the application for additional evidence and directed the appellate court to decide the application keeping in view the judgment of Hon'ble Supreme Court in case of Sanjay Kumar Singh (supra). I am unable to persuade myself to the law laid down and

direction given by this court, as in view of the law discussed above, there is no mandate that reasons have to be recorded while rejecting an application under Rule 27 sub-Rule (1)(b) of C.P.C. The requirement of law is that while accepting an additional evidence, the appellate court is required to record reasons. It is true that every judicial order is to be supported by reasons but in my view while rejecting an application for additional evidence, court is not required to give very detailed reason for rejecting the application, sufficient compliance of law will be if from the order it is reflected that court has applied its minds to facts of the case, evidence on record, and to the relevance of evidence sought to be produced at appellate stage.

44. Since the earlier judgment dated 18.9.2024 passed by this Court was an inter-party judgment directing the court below to decide the application as directed by this Court, I have perused the order impugned and from the perusal of order, I am of the view that lower appellate court has recorded reasons for rejecting the application. The contention of learned counsel for the petitioner that no reasons were recorded by the appellate court is misconceived.

45. Learned counsel for the petitioner has invited attention of this Court to the application under Order XLI Rule 27 C.P.C filed by the petitioner. From the perusal of the application, it appears that a feeble attempt was made by the petitioner for admission of additional evidence on the ground that due to oversight of petitioner's advocate, who conducted the trial, relevant documents could not be placed before the trial court (Paragraph No. 22 of the application). In paragraph No. 23, he has again made a feeble attempt by averting that the petitioner

made efforts and tried his best to secure copy of the same, but he could not secure the copy of the same to produce it before the trial court. And lastly, it has been stated in the application that the documents referred above are necessary for disposal of the appeal. The defense as set up by the petitioner in his written statement was that after execution of lease deed by the Ghaziabad Development Authority in his favor, the status of the petitioner was of a sub-lessee and therefore, the petitioner was not competent to execute the sale deed and thus, agreement to sell was executed by the petitioner under misconception of law. It was also the case of the petitioner that the Society has refused permission to the petitioner to execute the sale deed. Certain evidence was filed before the court below by the petitioner, but because the petitioner never proved the said evidences as he was absent and therefore, his right to adduce evidence was forfeited by the court below and the order become final.

46. I have also perused the documents which are being sought to be filed along with the application under Order XLI Rule 27 C.P.C. The document mentioned at serial No. 1 dated 20.12.1983 is an application moved by the Society before the Ghaziabad Development Authority for allotment of plots. Item No. 2 dated 23.04.1984 is the acceptance of the application of the Society by the G.D.A. Item No. 3 dated 28.04.1986 is the allotment letter by which Ghaziabad Development Authority has allotted 152 plots measuring 250 square meters in Sector 12 of Vidhi Vihar Colony to the Society. Item No. 4 dated 29.04.1986 is the application moved by the petitioner to become member of the Society. Item No. 5 dated 27.05.1986, is a receipt of Rs. 11,90,550 being 20% of the cost being paid to

Ghaziabad Development Authority. Item No. 6 dated 27.05.1986 is the letter of Ghaziabad Development Authority directing the Society to get the land demarcated. Item No. 7 dated 28.05.1986 is the letter by the Ghaziabad Development Authority informing the Society that development work has not completed yet and therefore, demarcation will not be possible. Item No. 8 dated 29.01.1988 and 11.06.1989 and 25.01.1990 are the letters of the Society to the G.D.A., reminding the G.D.A. and for possession of the land to the Society. Item No. 9 dated 14.06.1990 is the letter of G.D.A. informing Society that development work has completed and they should meet Joint Secretary of G.D.A. Item No. 10 dated 24.07.1990 is the letter of G.D.A. informing the Society that 30.07.1990 has been fixed for demarcation and measurement of plots. Item No. 11 dated 30.7.1990 is the memo of transfer of the land to the Society by the G.D.A. Item No. 12 dated 13.08.1990 is the letter of allotment of plot No. 122 to the petitioner. Item No. 13 dated 19.8.1990 is the possession letter issued to the petitioner. Item Nos. 14 and 15 are the orders dated 19.01.1993 and 24.09.2004 passed in Original Suit No. 634 of 1992. The Original Suit No. 634 of 1992 was filed by the Society for a declaratory decree that the G.D.A. is not entitled any amount except the amount of interest of Rs. 12,83,529/- admitted by letter dated 04.10.1991. The said suit filed by the Society was decreed by the trial court by order dated 25.09.2004. Item No. 16 is copy of an affidavit filed by the petitioner in the suit itself and item No. 17 is cheque for return of consideration in compliance of judgment passed by the trial court.

47. Item Nos. 1 to 13 in the list of documents, which are being sought by the petitioner to be adduced as additional evidence relates to application, allotment, demarcation of the land to the Society and thereafter to the petitioner. These documents are not at all relevant for disposal of the suit as the plaintiff himself in the suit has pleaded that after the allotment, an agreement to sell has been executed which has not been denied by the petitioner in his written statement, therefore, any preceding proceedings are not relevant and are also not necessary for the disposal of the controversy in hand. Similarly item Nos. 14 and 15 are the interim order as well as final order passed in Civil Suit No. 634 of 1992 are also of no use as the same relate to charging of panel interest by the G.D.A. from the Society. Item No. 16 is an affidavit which was filed by the petitioner in the present suit itself is also of no relevance as the said affidavit has already been filed in the suit. Since right to adduce evidence of the petitioner has been closed by the trial court for his absence, such affidavit cannot be filed as additional evidence and lastly, the cheque of amount of Rs. 47,200/- is also not relevant for the reason the said cheque has been issued for compliance of the judgment of trial court which is under challenge in appeal as the respondent was not agreeable to the refund of money and has filed the present appeal for decree of specific performance in pursuance to the agreement of sell in question.

48. Learned counsel for the petitioner relied upon judgment of **Deputy Registrar, Cooperative Societies vs. Chaudhary Sarfaraz-un-Zaman and others; 1971 SCC online Allahabad 361.** In the said case, it was argued before this

Court that appellate court could not have exercised jurisdiction under clause (b) of Rule 27(1) earlier than hearing of arguments in the appeal itself. It was argued that the appeal admittedly was not being heard by the Civil Judge who permitted reception of this additional evidence, although it may have been heard by his predecessor, and this additional evidence having been permitted to be produced anterior to such a stage, it was not a case where the appellate court could decide as to whether these documents were required by it to enable it to pronounce judgment. The submission noted above was not accepted by this Court and it was held that application under Order XLI Rule 27 of CPC may be moved by the parties in some cases, as in the present case, some time before the date of arguments in the appeal is fixed and in connection with the hearing of such application before the appeal, the appellate court may consider not only the issue or issues on which the additional evidence is sought to be produced, and in that connection examine the evidence bearing on the matter in controversy. If upon such examination of the evidence with reference to issue or issues before it the Court comes to the conclusion that the document sought to be produced at that late stage will be required to enable it to pronounce judgment on the issue or issues then the requirements of clause (b) of Rule 27(1) of Order XLI of the Code, as amended by this Court, to my mind, will stand satisfied and it is immaterial that such a decision has not been contemporaneous with the hearing of the appeal itself. The material point is that a decision under clause (b) of Rule 27(1) must be taken by the Court on an examination of the evidence as observed by the Privy Council in the case of Parsotim

(supra). This has happened in this case and therefore the argument that there was improper exercise of jurisdiction by the appellate Court under clause (b) of Rule 27 as the appeal itself was not heard by the time the application under Order XLI, Rule 27 was allowed cannot be accepted.

49. There is no dispute to the proposition of law laid down by this Court. The court may exercise the power to receive additional evidence at an intermittent stage of the appeal also but since for exercise of power under sub-clause (b) of sub-Rule 1 of Rule 27, the court has to consider the evidence on record for coming to the conclusion of its requirement as contemplated under sub-clause (b), it is more practical to consider the application at the stage of hearing otherwise examining of evidence has to be undertaken by the appellate court twice.

50. Learned counsel for the petitioner also relied upon judgment of Supreme Court in case of **State Bank of India versus Messrs Ashok Stores and Others;1981 SCC online Orissa 69**. In that case, in exercise of power, clause (b) of sub-rule (1) of Rule 27 was challenged on the ground that appellate court should decide whether the document is required by it, is reached after the commencement of the hearing of the appeal when the court apprises itself of the facts and circumstances of the case. At that stage only the appellate court would be in a position to adjudge the requirement. The record of the appeal does not disclose that the appellate court had by the time of disposal of the application filed by the petitioner for adducing additional evidence apprised itself of the facts of the case and it was also submitted that order of appellate court rejecting the

petition of the petitioner for additional evidence is unsustainable. The Orissa High Court held as the hearing of the appeal in the present case had not commenced before the appellate court nor did the appellate court examined the evidence to adjudge the requirements of the provisions of clause (b), it was inappropriate to deal with the application for additional evidence. The order of rejection is, therefore, not sustainable and is set aside.

51. In view of the law laid down by this Court as well as by the Hon'ble Supreme Court, I am unable to persuade myself to the view taken by the Orissa High Court. The judgment of the Orissa High Court is not applicable to the facts of the present case as the grievance of the petitioner is that the court below ought to have recorded reasons for rejecting the application filed by the petitioner and not that the said application has been rejected at the stage prior to hearing of the appeal.

52. Learned counsel also relied upon judgment in case of Akash Ganga Builders and Engineers (supra), wherein the Delhi High Court has held that it is not that a document can be called at the appellate stage at the instance of a party only. The Court in order to do substantial justice can also call for a document. Rule 27(1)(b) empowers the Court to call for a document without the aid of any party.

53. There is no dispute as to the proposition of law laid down by the Delhi High Court in the aforesaid judgment, but as held by this Court as well as by the Supreme Court that under clause (b), the requirement is of the Court itself, and if the Court finds that a particular document is required for pronouncement of

judgment or for any other substantial cause, the same can be admitted as additional evidence.

54. Learned counsel for the petitioner also relied upon judgment of **K.R. Mohan Reddy (supra).** The Supreme Court in paragraph No. 15, 16, and 17 of the judgment has held as under:-

> *"(15) The High Court, in our opinion, failed to apply the provisions of Order 41 Rule 27 of CPC in its correct perspective. Clauses (a), (aa) and (b) of Sub-rule (1) of Rule 27 of Order XLI refer to three different situations. Power of the appellate court to pass any order thereunder is limited. For exercising its jurisdiction thereunder, the appellate Court must arrive at a finding that one or the other conditions enumerated thereunder is satisfied. A good reason must also be shown as to why the evidence was not produced in the trial Court.*
>
> *(16) Respondent in its application categorically stated that the books of accounts had been misplaced and the same were discovered a few days prior to the filing of the said application while the office was being shifted. The High Court, unfortunately did not enter into the said questions at all. As indicated hereinbefore, the High Court proceeded on the basis as if clause(b) of Sub-rule (1) of Rule 27 of Order XLI of CPC was applicable.*
>
> *(17) It is now a trite law that the conditions precedent for application of clause (aa) of Sub-rule (1) of Rule 27 of Order XLI is different from that of clause(b). In the event the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand clause(b) to Sub-rule (1) of Rule 27 of Order XLI of CPC is to be taken recourse to, the appellate Court was bound to consider the entire evidences on record and come to an independent finding for arriving at a just decision;*

adduction of additional evidence as has been prayed by the appellant was necessary. The fact that the High Court failed to do so, in our opinion, amounts to misdirection in law."

55. There is no dispute to the law laid down by the Hon'ble Apex Court as noted above but the said judgment is not applicable to the facts of the present case as in the present case the scope of enquiry is applicability of sub-clause (b) of sub-Rule 1 of Rule 27. Though in the application filed by the petitioner for additional evidence, feeble attempt was made by the petitioner to bring his case within the parameter of sub-clause (aa) of sub-Rule 1 of Rule 27, but without the relevant pleading and material for the same.

56. Learned counsel for the petitioner also relied upon judgment in the cases of Sangram Singh (supra), Chinnamal and others (supra), Dondapati Narayana Reddy (supra) and Commissioner Mysore Urban Development Authority (supra) to contend that C.P.C. is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishment and penalties. The law of procedure should be so construed as to render justice wherever reasonably possible. There is no dispute with the proposition of law laid down by the Supreme Court in the aforesaid judgments, but the situation in case of additional evidence is slightly different.

57. The Supreme Court in case of **State of Gujarat versus Mahendarkumar Parshottambhai Desai; 2006 (9) SCC 772** has held as under:-

"10.... though the appellate court has the power to allow a document to be produced and a witness to be examined under Order 41 Rule 27 CPC, the requirement of the said Court must

be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision did not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in the case. It does not entitle the appellate court to let in fresh evidence only for the purposes of pronouncement of judgment in a particular way."

58. Recently, in case of **Gobind Singh and others Vs. Union of India; 2026 AIR SC 1303,** Hon'ble Supreme Court in paragraph No. 11.7 has held as under:

"11.7. The procedural framework under Order XLI of CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the Trial Court. The Appellate Court is not expected to embark upon a fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the Appellate Court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below."

59. In case of **K.R. Mohan Reddy (supra)** the appellate court has held as under in paragraph No. 19:-

"19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial Court, but it will be different if the Court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the Court. But mere difficulty is not sufficient to issue such direction. While saying so, however, we do not mean that the court at an appropriate stage would be precluded from considering the applicability of clause (b)."

60. In my view, the appellate court should not pass an order as to patch up the weaknesses of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court.

61. So far as contention of learned counsel for the respondent that since the opportunity of leading evidence of the petitioner was closed by the trial court, in fact, no evidence was led by the petitioner before the trial court and therefore he cannot be permitted to lead additional evidence at the stage of appeal, as the expression "additional evidence" in Rule 27 of Order XLI the Code implies leading of some evidence by the party, only where the party has led some evidence, then only party can be permitted to lead additional evidence.

62. The argument of learned counsel for the respondent appears to be very attractive, but this controversy has been settled by the Supreme Court in the case of **Jaipur Development Authority vs. Kailash Pati Devi, 1997 (7) SCC 297,** the Supreme Court held that the term “additional evidence” does not mean that parties seeking to produce additional evidence must have adduced some evidence in the lower court. Such a view amounts to introducing an additional condition not contemplated by sub-rule. There is no distinction between a party who has led some evidence and a party who has not led any evidence at all.

63. Learned counsel for the respondent submitted that power to receive additional evidence or refuse is a discretionary power

vested with the appellate court. Once such a discretion has been exercised by the appellate court, the superior court should not normally interfere with such in exercise of powers under Section 115 C.P.C. or in exercise of power under Article 226 or Article 227 of the Constitution of India. It has also been submitted by learned counsel for the respondent that appellate court while deciding the question whether it requires the evidence as additional evidence comes to the conclusion after examining the entire evidence available on record and the superior court, while exercising the jurisdiction, normally does not have the record before it, under Section 115 C.P.C. or exercising powers under Article 226 or 227 of the Constitution of India.

64. Learned counsel for the respondent relied upon the judgment of Apex Court in the case of **Mahaveer Singh vs. Naresh Chandra, 2001 (1) SCC 309.** Paragraph No. 5 of the said judgment is quoted as under:-

> *"5.... The words 'or for any other substantial cause' must be read with the word 'requires'", which is set out at the commencement of the provision,so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule would apply as noticed by the Privy Council in Kessowji Issur v. Great Indian Peninsula Railway Co. It is under these circumstances such a power could be exercised Therefore, when the first appellate court did not find the necessity to allow the application, we fail to understand as to how the High Court could, in exercise of its power under Section 115 CPC, have interfered with such an order, particularly when the whole appeal is not before the Court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would*

arise and not in any other circumstances. When the first appellate court passed the order on the application filed under Order 41 Rule 27 CPC, the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, we fail to understand as to how the High Court could interfere with such an order under Section 115 CPC."

65. Learned counsel for the respondent also relied upon the judgment in the case of **Gurudev Singh vs. Mehanga Ram, 1997 (6) SCC 507.** In paragraph No. 2 of the Gurudev Singh (supra), the Apex Court has held as under:-

"2. We have heard the learned counsel for the parties. The grievance of the appellants before us is that in an appeal filed by them before the learned Additional District Judge, Ferozepur, in an application under Order 41 Rule 27(b) of the Code of Civil Procedure (CPC) the learned Additional District Judge at the final hearing of the appeal wrongly felt that additional evidence was required to be produced as requested by the appellants by way of examination of a handwriting expert. The High Court in the impugned order exercising jurisdiction under Section 115 CPC took the view that the order of the appellate court could not be sustained. In our view the approach of the High Court in revision at that interim stage when the appeal was pending for final hearing before the learned Additional District Judge was not justified and the High Court should not have interfered with the order which was within the jurisdiction of the appellate court. The reason is obvious. The appellate court hearing the matter finally could exercise jurisdiction one way or the other under Order 41 Rule 27 specially clause (b). If the order was wrong on merits, it would always be open for the respondent to challenge the same in accordance with law if an occasion arises to carry the matter in second appeal after an appellate decree is passed. But at this interim stage, the High Court should not have

felt itself convinced that the order was without jurisdiction. Only on this short question, without expressing any opinion on the merits of the controversy involved and on the legality of the contentions advanced by both the learned counsel for the parties regarding additional evidence, we allow this appeal, set aside the order of the High Court."

66. There is no dispute as to the proposition of law that it is the discretion of the appellate court either to admit or refuse the additional evidence in exercise of powers under Rule 27(1)(b), but the discretion is not to be exercised arbitrarily but has to be exercised on settled judicial principles. The judgments in case of Mahavir Singh (supra) and Gurudev Singh (supra) relied upon by the respondents arose where the High Court, in exercise of powers under Section 115 C.P.C, has interfered with the discretion exercised by the appellate court. Though, the jurisdiction of the Court exercising power under Article 227 of the Constitution of India, is wider than the jurisdiction as provided under Section 115 C.P.C, but still the Superior Court should not interfere with the discretionary power exercised by the appellate court unless the discretion exercised by the appellate court is found to be arbitrary.

67. I have also perused the judgment passed by the court below wherein the court below has considered the documents and has come to the conclusion that these documents are not at all relevant for disposal of the appeal. In the present case, cogent reasons have been given by the appellate court while rejecting application filed by the petitioner under Order XLI Rule 27 C.P.C. which cannot be said to be arbitrary. I find no illegality in the order passed by the court below as from the

discussions made above the documents are not at all necessary for the controversy involved in the appeal. The court below has rightly rejected the application filed by the petitioner.

68. Consequently, the petition fails and is dismissed. No orders as to cost.

(Manish Kumar Nigam,J.)

April 23, 2026
Nitika Sri.