
(2011) 11 AHC CK 0262
In the Allahabad High Court
Case No : Writ C. No. 37370 of 2007

Ashok Kumar

APPELLANT

Vs

Anil Kumar Yadav and others

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2011) 11 AHC CK 0262

Hon'ble Judges : Sunil Hali, J

Final Decision : Allowed

Judgement

Sunil Hali, J.

The only issue which has resulted in filing of the instant writ petition is that the petitioner's right to file rebuttal to the documents filed by the respondents before the appellate court has been rejected by the Trial Court.

Facts of the case reveal that a suit for permanent prohibitory injunction was filed by the petitioner in which an application for temporary injunction was also filed and the same has been finally rejected against which a Misc. Appeal has been preferred in which an application for interim injunction was filed upon which a an adinterim direction was issued by the appellate Court. Objections were filed by the respondents to the said application in which certain fresh documents were brought on record which was never canvassed before the Trial Court. An application was filed by the petitioner before the appellate Court with a prayer not to take these documents on record but the same has been rejected by the appellate court. However, another application came to be filed by the petitioner in which he sought permission to file counter/objection for rebutting the documents filed by the respondents along with objection filed against the interim order passed by the appellate Court. Even though trial Court has not passed any final order but he has rejected the application without indicating any valid reasons. No detailed order has been passed by the appellate Court.

Heard learned counsel for the parties and perused the materials on record.

Two folds prayer have been made by the petitioner firstly, that permitting additional evidence to be taken on record is nothing else but an utter disregard of the procedure prescribed under the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 (in short C.P.C.). Secondly, even if it is presumed that the Court can take on record any material at the appellate Stage, the petitioner has right to rebut those by filing counter to that which right has been refused.

Before proceeding with the case it is relevant to quot the provisions contained under Order XLI Rule 27 of C.P.C. which runs 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) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

While scanning through the provision of Order XLI Rule 27 of CPC, it is clear that additional evidence cannot be permitted except for the exceptions provided therein. Admittedly, no such exigency/contingency arose in the present case. Documents have been filed in support of the objections filed by the respondents before the lower appellate Court to the interim application. There is no need to enter into this arena as this writ petition can be allowed only on a very short question that is as to whether the petitioner be permitted to file his counter rebutting the documents filed by the respondents in support of his objection to the interim application.

Petitioner has every right to question the authenticity of the said documents reliance of which has been placed by the respondents. In case, petitioner is not permitted to rebut such documents inference can be drawn against him in this behalf.

Considering the facts and circumstances of the case, the writ petition is allowed. The order dated 3.8.2007 passed by respondent no. 4 are hereby quashed.

Appellate Court is directed to take counter rebutting the documents filed by the respondents on record. Petitioner shall also be at liberty to raise the question before appropriate court as to whether such a course of allowing additional evidence at the appellate stage can be permitted or not in misc. appeal, more particularly, when there is no such provision under the law. Even if it is assumed that the provision of Order XLI Rule 27 of C.P.C. would apply in Misc. Appeal then the requirements of order XLI Rule 27 of C.P.C. are required to be satisfied. All this issue shall be considered by the lower appellate Court.

With aforesaid observation, the writ petition is allowed. No order as to costs.