

(2012) 03 KAR CK 0031
In the Karnataka High Court
Case No : Criminal Petition No. 352 of 2009

Deepak Sood

APPELLANT

Vs

Smt. Jaya Pai, rep. by her G.P.A. Raghavendra Rao

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 391

Citation : (2012) 03 KAR CK 0031

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M.T. Nanalah Associates, for the Appellant; G. Krishna Murthy, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda

1. In the appeal against judgment of conviction, petitioner had made an application for additional evidence. The learned Judge of I-appellate court should have heard the application along with merits of the appeal, instead the application has been independently heard and dismissed. In a decision reported in Rambhau and Another Vs. State of Maharashtra, , the Supreme Court has held:-

4. Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power u/s 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41. Rule 27 of the C.P.Code.

2. The procedure followed by the learned Judge of I-appellate court is contrary to the settled principles of law. Therefore, the impugned order cannot be sustained. In the result, I pass the following: -

ORDER

The petition is accepted. The impugned order is set aside. The matter is remanded to learned Judge of I-appellate court for reconsideration of the application for additional evidence along with merits of the appeal.