

(2011) 11 AHC CK 0387
In the Allahabad High Court
Case No : Writ-C. No. 67641 of 2011

Gopal Dharmshala Trust (Sri) and Another	APPELLANT
Vs	
Rama Shankar and Others	RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

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

Citation : (2012) 116 RD 63

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Advocate : Arvind Srivastava and Pushkar Srivastava, for the Appellant;
Rishikesh Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.—Heard Sri Arvind Srivastava, learned Counsel for the petitioners and Sri Rishikesh Tripathi, learned Counsel appearing for the respondent. By means of this writ petition the petitioners are challenging the order of the Appellate Court by which for admitting additional evidence at the appellate stage under Order, XLI, Rule 27, CPC was rejected.

2. Learned Counsel for the petitioners submits that the aforesaid document sought to be admitted in evidence and the additional evidence is necessary for the proper adjudication of the case.

3. Order XLI, Rule 27 of the CPC postulates for admission of additional evidence at the behest of the parties of the suit only under two conditions. Firstly, if the said document were asked to be admitted as evidence before the Trial Court and the Trial Court has refused to accept the same, such document can be presented under Order XLI, Rule 27-A of the CPC. Second condition is that where the parties seeking to produce additional evidence is able to establish that even with due diligence such evidence was not within his knowledge.

4. In the present case, these two conditions are not available and, therefore/ in

my view, the Court below has rightly rejected the application under Order XLI, Rule 27, CPC. There is no merit in the petition. It is, accordingly, dismissed.