

(2019) 01 OHC CK 0032

In the Orissa High Court

Case No : Civil Miscellaneous Petition No. 1479 Of 2018

Gopal Krushna Panda Alias Gopal Krishna Panda

APPELLANT

Vs

Manager, Utkal Grameen Bank And Another

RESPONDENT

Date of Decision : 28-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2019) 196 AIC (Sum 17) 7

Hon'ble Judges : A.K. Rath, J

Bench : Single Bench

Advocate : Prasanna Kumar Parhi, Ashutosh Panda

Final Decision : Allowed

Judgement

A.k. Rath, J

1. This petition challenges the order dated 07.9.2018, passed by the learned Additional District Judge, Chatrapur (Ganjam), in R.F.A. No. 25 of 2016,

whereby and whereunder, the appellate court rejected the application of the petitioner-appellant under Order 41 Rule 27 CPC to admit five number of

documents as additional evidence.

2. Since the dispute lies in a very narrow compass, facts need not be recounted in details. Suffice it to say that plaintiff-petitioner instituted the Civil

Suit No. 2 of 2014 praying for damages. The suit having been dismissed, he filed R.F.A. No. 25 of 2016 before the learned Additional District Judge,

Chatrapur (Ganjam). During pendency of the appeal, he filed an application under Order 41 Rule 27 CPC to admit five numbers of documents as

additional evidence. The respondents-opposite parties objected the same. The appellate court rejected the application.

3. Mr. Prasanna Kumar Parhi, learned counsel for the petitioner submits that the petitioner has filed an application under Order 41 Rule 27 CPC to

admit five numbers of documents as additional evidence. Learned appellate court is not justified in rejecting the said application before hearing of the appeal.

4. Per contra, Dr. Ashutosh Panda, learned counsel for the opposite party no. 1 submits that learned appellate court passed a reasoned order. There is no perversity in the said order warranting interference of this Court.

5. The question does arise as to whether the appellate court can consider the application filed under Order 41 Rule 27 CPC for admitting additional evidence before hearing of the appeal.

6. The subject-matter of dispute is no more res integra. In Sankar Pradhan v. Premananda Pradhan (dead), 2015 (II) CLR 583, this Court in

paragraph-7 of the report held as follows:

“7. In Parsotim Thakur v. Lal Mohar Thakur, AIR 1931 Privy Council 143, it is held that under Cl.(1)(b) of Rule 27 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.” 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 Rule 27(2) to record its reasons for so doing (emphasis laid). The

same view was taken by this Court in the cases of Banchhanidhi Behera v. Ananta Upadhaya, AIR 1962 Orissa 9 and State Bank of

India v. Ashok Stores, 53 (1982) C.L.T.552.”

(emphasis laid)

7. In view of the authoritative pronouncement of this Court in the case of Sankar Pradhan (supra), the inescapable conclusion is that the application

for additional evidence can be considered at the time of hearing of the appeal.

8. In the wake of aforesaid, the order dated 07.09.2018, passed by the learned Additional District Judge, Chatrapur (Ganjam), in R.F.A. No. 25 of

2016 is quashed. Learned Additional District Judge shall consider the application for additional evidence at the time of hearing of the appeal.

9. The petition is allowed. There shall be no order as to costs.