
(2019) 11 JH CK 0057
In the Jharkhand High Court
Case No : Writ Petition (c) No. 4306 Of 2019

Jainarayan Mahto

APPELLANT

Vs

Nageshwar Mahto And Ors

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 41 Rule 27

Citation : (2019) 11 JH CK 0057

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Prabhash Chandra Sinha

Final Decision : Dismissed

Judgement

The order dated 30.05.2019 and 14.06.2019 passed in Civil Appeal No.01 of 2016 is under challenge by which the petition dated 23.01.2019 filed under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure has been rejected.

It is admitted case of the petitioner that in course of trial no such application has been filed for adducing the evidence and when the decree has been passed which is subject matter of appeal, a petition under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure has been filed for allowing the appellant-judgment debtor to adduce the additional evidence but the same has been disposed of without any reason, therefore, the present writ petition.

This Court before entering into the merit of the matter, deem it fit and proper to deal with Order XLI Rule 27 which reads 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 out 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.

The aforesaid provision provides the exigencies to adduce the additional evidence by the appellate court subject to the conditions contained therein. The conditions are as under:

1(a) that if any such petition has been filed before the trial court for seeking leave to adduce the evidence and the same has been rejected;

1(aa) provides that if no such petition has been filed, the petitioner has to satisfy the due diligence of such evidence before the appellate court then it would be considered and the provision of 1(b) that if the appellate court will come to the conclusion after providing the evidence and the relevance of additional evidence should be considered before pronouncement of the judgment.

It has been held by the Hon'ble Apex Court rendered in the case of Union of India vs. Ibrahim Uddin And Another reported in (2012) 8 SCC 148 making the condition contained under Order XLI Rule 27 is mandatory. Further, the ratio has been laid down that if any petition has been filed under Order XLI Rule 27 that has to be supported by the valid reasoning.

In the backdrop of this legal position the finding recorded in the impugned order has been appreciated by this Court.

It is the admitted position that no such petition has been filed under Order XLI Rule 27 (1) (a).

So far as filing of petition by showing due diligence before the appellate court, is required to filed under Order XLI Rule 27 (1)aa. It is evident from the finding recorded that since no petition has been filed under Order XLI Rule 27, in order to appreciate the same on record, it transpires that the due diligence which prevented the petitioner herein in filing such evidence has not been shown.

In view thereof, neither the condition stipulated under Order XLI Rule 27 (1) (a) or 1(aa) is available.

The provision of Order XLI Rule 27 (1) b which provides about consideration of the evidence which if found fit to be considered after appreciating the evidence

by the appellate court that is to be considered for proper adjudication.

The order impugned reflects that a petition has been filed under Order XLI Rule 27 for leading evidence at the appellate stage but appellate court has found non availability of the ingredient either provided under Order XLI Rule 27 (1) a, 1(aa) and therefore, has passed an order by disposing of the petition filed under Order XLI Rule 27 (1) b of the Code of Civil Procedure.

This Court, therefore, is of the view that since the mandatory condition as provided under the provision of Order XLI Rule 27 (1) (a) or 1(aa) is not available, therefore, if any order has been passed keeping the provision as contained under Order XLI Rule 27 (1) (b), the same cannot be said to suffer from infirmity, warranting any interference by this Court.

Accordingly the writ petition stands dismissed.