

(2013) 08 CAL CK 0007
In the Calcutta High Court
Case No : C.O. No. 594 of 2011

Modern Packaging Corporation

APPELLANT

Vs

West Bengal Financial Corporation

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2014) 1 WBLR 905

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Judgement

Subhro Kamal Mukherjee, J.—By the order impugned, the learned Judge in the lower appellate Court rejected an application for reception of additional evidence. The learned Judge in the lower appellate Court opined that there was no whisper in the four corners of the petition that the appellant could not produce those documents, sought to be relied upon as additional evidence, in spite of due diligence.

2. What is the learned Judge in the lower appellate Court missed is that the true test is whether the appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be produce. The appropriate time to pass orders, if any, under Order 41, Rule 27 of the CPC is the time for final hearing of the appeal when the appellate Court is in a position to scrutinise and appreciate the evidence on record. Delay or negligence is no bar when the Court itself requires the evidence for satisfactory decision.

3. Therefore, the learned Judge in the lower appellate Court ought to have considered the said application at the time of final hearing of the appeal.

4. The order impugned is, thus, set aside.

5. The application filed under Order XLI, Rule 27 of the CPC is restored to its original file.

6. I direct the learned Additional District Judge, Third Court, Paschim Midnapore, to consider the said application for production of additional evidence along with the appeal uninfluenced by his observations made in the order impugned.
7. I direct the learned Judge in the lower appellate Court to dispose of the appeal as expeditiously as possible preferably within three months from the date of communication of this order to the Court below.
8. The office is directed to communicate this order to the lower appellate Court, immediately.
9. The revisional application is, thus, allowed. I make no order as to costs.