

(1994) 04 OHC CK 0022

In the Orissa High Court

Case No : Civil Revision No. 324 of 1992

Mrutunjoy Lenka and Others

APPELLANT

Vs

Gagan Kishore Swain (Dead) and after him his L.Rs. and Others

RESPONDENT

Date of Decision : 04-04-1994

Acts Referred:

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

Citation : AIR 1995 Ori 71 : (1994) 1 OLR 515

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : K.C. Lenka, for the Appellant; G.C. Patnaik, N.P. Parija and L. Misra, for the Respondent

Judgement

S.C. Mohapatra, J.—Rejection of an application for adducing additional evidence before delivery of judgment by the appellate Court is

grievance of the appellant-petitioners in this Civil Revision.

2. For the purpose of considering whether additional evidence is to be entertained by the appellate Court, first it is to be examined whether the

evidence sought to be adduced is relevant and admissible. If admissibility of document would require proof through oral evidence, court is to

consider whether such opportunity is to be given. This would depend upon three circumstances as indicated in Order 41, Rule 27, C.P.C. Where

a party was not in possession of the additional evidence at the time of trial, he can be given opportunity to bring in the same to record and for the

purpose of bringing them to record, court is to assist that party. Where despite the evidence being produced court refused to entertain the same,

appellate Court can give opportunity to the party for bringing the materials to

record in accordance with law. The third ground is a discretion of the court. Where appellate Court feels that for proper adjudication of the suit the materials ought to be entertained, it can also entertain the same although the first two grounds are not satisfied. Therefore, it is always desirable to consider the application for additional evidence along with the merits of appeal so that court can consider whether on the facts and in the circumstances of the case the additional evidence would be entertainable.

3. In this case public documents are sought to be adduced as additional evidence. There is no dispute that they are relevant. There is also no dispute that they are admissible without proof. It may be that explanations would be necessary from the respondents. In case appellants are guilty in not bringing those materials to record, the prejudice caused to the respondents by pro-longed litigation can be mitigated by directing to pay adequate costs. Appellate court ought not to have rejected the same on the ground that they were not produced though appellants had opportunity to produce the same previously. I may make it clear that the appellate Court can consider whether on the basis of the pleadings those documents would be entertained as evidence for proper adjudication of the appeal, as no evidence can be entertained if there is no pleading in support.

4. Since appellants had filed the petition for additional evidence after the hearing of appeal was closed, I direct that plaintiff-respondents shall be paid costs of Rs. 500/- (Rupees five hundred) within one month from today in the appellate Court. On payment of Rs. 500/- to plaintiff-respondents or depositing the same in court for payment, appellate Court shall bear the application for additional evidence along with merits of the appeal, subject to the observations made above.

5. In result, Civil Revision is allowed to the extent indicated above.