

**(1924) 05 AHC CK 0086**  
**In the Allahabad High Court**

Multan Singh and Others

APPELLANT

Vs

Pudhan Man Singh and Others

RESPONDENT

---

**Date of Decision :** 19-05-1924

**Acts Referred:**

**Citation :** AIR 1924 All 854 : 84 Ind. Cas. 74

**Hon'ble Judges :** Neave, J; Daniels, J

**Bench :** Division Bench

**Final Decision :** Dismissed

---

## Judgement

1. After reciting the facts the judgment proceeded: It is argued that the words in Sub-rule 1(b), "or for any other substantial cause" would justify the Appeal Court in entertaining an application of this character; and if a party can satisfy the Court that since the filing of the appeal he has discovered further evidence that was not known or available to him and could not have been discovered with due diligence during the pendency of the appeal even up to the date of the judgment, then the Court can entertain the application.

2. In Kessowji Issur v. Great Indian Peninsula Railway 34 I.A. 115 : 31 B. 381 the provisions of Section 568 of the Code of 1882 were considered by their Lordships of the Privy Council. In that case, pending the appeal, the Trial Judge had refused an application of the defendants u/s 623 of C.P.C. for a new trial on the ground of discovery of new matter. An application was then made u/s 568 of C.P.C. and the Appellate Court ordered that further evidence should be taken, and that evidence was taken before the appeal came on for argument. Their Lordships of the Privy Council in dealing with that decision of the Appeal Court said (page 121):

Now at this stage the question is, Under what jurisdiction was this fresh evidence taken by the Appellate Court? They had, as has been noticed, no jurisdiction to reverse the refusal of Tyabji, J., appeal from his decision being excluded by Statute. Section 568 of C.P.C. can alone be looked to for sanction of this

proceeding, but when its terms are examined they will be found inapplicable. The part of the section which alone is colourably relevant is: If the Appellate Court requires" which plainly means needs, or any witness to be examined to enable it to produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial reason, the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined....

Now this evidence was admitted by the order of September 30, 1904, and that order states no reason for such admission. Prima facie, therefore, this was not done u/s 568. But, further, the ultimate judgment of the Appellate Court puts it beyond doubt that in fact the learned Judges were simply reviewing and reversing Tyabji, J.'s refusal, of review, for they frankly narrate that refusal, and go on to say: On the case coming up in appeal it appeared to us desirable that the further inquiry-invited should be undertaken. On this phraseology, in appeal, it must be observed that the further evidence was ordered, not after the appeal on the merits had been heard and the evidence as it stood had been examined by the Judges, but on special and preliminary application. This is important, because the legitimate occasion for Section 568 is when, on examining the evidence as it stands, some inherent, lacuna or defect becomes apparent, not where a discovery is made, outside the Court, of fresh evidence and the application is made to import it. That is the subject of the separate enactment in Section 623.

3. Now there has been no alteration made as far as I can see in Order XLI, Rule 27, which corresponds to Section 568.

4. It seems, therefore, that an application to the Appeal Court for further evidence to be taken on the ground that it has recently been discovered, whether it is made before the appeal is heard, or before judgment is given, does not come within the provisions of Order XLI, Rule 27. Their Lordships were evidently of opinion that the words "or for any substantial cause" in Sub-rule 1(b) did not give the Court jurisdiction to entertain an application for recording further evidence on the grounds which would enable an application to be entertained under Order XLVII, Rule 1. The application, therefore, that we should allow further evidence to be recorded must be rejected.