

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 698 of 2024

***M/s. Child Care Aqua Fountain represented by its proprietor Smt. Sreoshi
Dutta***

VERSUS

Pradip Bhattacharjee

For the petitioner:

Mr. Satyan Mukherjee, Adv.
Mrs. Sayani Ahmed, Adv.
Mr. Purnendu Shekhar Ghosh, Adv.
Mr. Saibal Rakhit, Adv.

For the opposite party

Mr. Susenjit Banik, Adv.
Mr. Prasanta Bishal, Adv.

Last Heard on: March 18, 2025

Judgment on: March 28, 2025

Biswaroop Chowdhury,J:

1. The petitioner before this Court is a defendant in an Eviction suit being Title Suit No-226 of 2011 before Learned 2nd Court Civil Judge Senior Division at Barasat and Appellant in the Appeal being Title Appeal No-43 of 2017 pending before Learned District Judge – North

24 Parganas preferred against decree of eviction passed by Learned 2nd Court Civil Judge Senior Division at Barasat in Title Suit No-226/2011 and is aggrieved by Order dated 08.02.2024 passed by the Learned Appellate Court dismissing petition under Order XLI Rule 27 CPC.

2. The petitioner being aggrieved by the Order dated 08.02.2024 passed by the Learned Appellate Court has come up with the instant application under Article 227 of the Constitution of India.
3. The case of the petitioner in an application under Order XLI Rule 27 of the Code of Civil Procedure before Learned Appellate Court may be summed up thus;
4. The Appellant was a tenant under the Plaintiff/Respondent for just one month and took rent receipt for just one month to obtain trade license for its business as the plaintiff/respondent already entered into Sale Agreement and also handed over possession of the suit property and other properties of the Suit Holding in favour of Diana Hoare and Debaditya Hoare, the intending purchasers as well as full blooded sister and brother of Appellant.
5. The said intending purchasers filed a suit for specific performance of the Sale Agreement and possession and handing over documents executed by the Respondent herein vide Title Suit No. 24/2011 before the Same Court of Learned Civil Judge (Senior Division) at Barasat and the said suit is the earlier suit than the Suit No. T.S. 226/2011

against which the instant Appeal is filed and suit properties of the said T.S. 24 of 2011 and T.S. 226/2011 are same.

6. The present Respondent is the Sole Defendant in the said earlier suit for specific performance of Contract in T.S. 24/11 and sole plaintiff in his later suit being T.S. 226/2011 before the same Court.
7. It is admitted by the Respondent/Plaintiff herein that he filed this later suit No. T.S. 226/2011 after receiving summon of the earlier suit being No. 24/2011 in his cross examination dated 04-09-2015 in this case being T.S. 226/2011.
8. In the meantime the intending purchasers ie. sister and brother of the Appellant/Petitioner filed all their unregistered sale Agreement, possession letter and other documents in their suit being No. 24/2011 on 14-12-2012 on the date of contested injunction hearing and those were lying with the case record of that suit and for which the Appellant/Defendant could not file or produce those documents in the later suit No. 226/11 to prove her defence.
9. After impounding in proper way said unregistered documents have been marked as Exhibits in said T.S. 24/2011 without any objection before the same Learned Court and the present Appellant has succeeded to collect those exhibited documents from her sister and brother who got the same from Learned Court by replacing the certified copies.

10. The said Exhibited documents of the earlier Suit No-T.S. 24/11 is very much required to produce before the Learned Court as Additional Evidence on the part of Appellant/Defendant in disposing the Appeal otherwise the defendant/appellant will suffer irreparable loss and injury as the plaintiff cannot claim any amount as rent from Appellant after handing over the possession of the suit property in favour of the intending purchases.
11. The opposite party submitted objection to the petition of the petitioner. It was the contention of the opposite parties that agreement for sale dated 29-05-06 was entered in between Respondent and Smt Diana Hore and appellant was not a party therein and therefore the document has no relevance. It was further contended that the document dated 19-09-2006 was executed by respondent in favour of Smt. Diana Hore and there is no nexus with the appellant. It was also contended that from the documents it is clear that the appellant is trying to introduce a new story which has no nexus with the privity of respondent. The Learned Appellate Court by Order dated 08-02-2024 was pleased to dispose the application filed by the Appellant/Petitioner under Order XII Rule 27 read with Section 151 of CPC by observing as follows :-

Having traversed through the amended W/S and the evidence led by the appellant/defendant before the suit Court and having noted the contents of the order sheet in Title Suit No. 24/2011, as discussed above, this Court finds that

the appellant/defendant has failed to establish its case that would entitle the appellant firm him to produce additional evidence at this appellate stage. This Court, even otherwise, does not find any reason to allow additional evidence, more particularly in the face of specific objection raised by the decree holder/respondent, to be taken at this appellate stage. Hence, the prayer stands refused, the application under Order XLI rule 27 of CPC stands dismissed, on contest, however in the circumstances, with no order as to costs.'

12. The petitioner being aggrieved by the order dated 08.02.2024 passed by the learned appellate court has come up with this application under Article 227 of the constitution of India.

13. It is the contention of the petitioner that the Learned Court acted illegally and with material irregularity in passing the Order impugned without considering that the petitioner could not have produced the additional documents as evidence during trial in the suit since the same were kept with the records of Title Suit No-24 of 2011. It is further contended that the Learned Court below acted illegally and with material irregularities in passing the Order impugned without considering that subject properties of both the suits, being Title Suit No. 24 of 2011 and Title Suit No. 226 of 2011 are identical and same and as such the exhibited documents in Title Suit No-24 of 2011 would have direct bearing on the facts of the instant Appeal which arises out of Title Suit No. 226 of 2011. It is also contended that the

Learned Court acted illegally and with material irregularities in passing the Order impugned without considering that the evidence of the P.W.1 in Title Suit No. 24 of 2011 could only be initiated after the unregistered agreement for sale dated 30th May 2006 was impounded and requisite stamp duty along with penalty fees was paid by the plaintiffs in Title Suit No- 24 of 2011 and since the said documents went exhibited without any objection by the Opposite Party the same became extremely necessary for effective adjudication of the instant Appeal.

14. Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party perused the petition filed and materials on record.
15. Learned Advocate for the petitioner submits that the Learned Appellate Court failed to appreciate that the petitioner was prevented by sufficient cause to produce the documents he seeks to rely in Appeal. Learned Advocate further submits that the Learned Trial Court failed to appreciate that the documents are very much necessary to proceed with the appeal. Learned advocate produces a copy of Agreement for sale dated 29/05/06 purported to be executed by opposite party and one Diana Hare and submits that the document will go to show that petitioner was not occupying suit property when the suit was instituted although decree of eviction is passed and mesne profits awarded. Learned advocate for the opposite party

submits that the documents sought to be relied upon by the petitioner is not at all relevant and the Learned appellate court rightly refused the prayer. Before proceeding to decide the matter in issue it is necessary to consider the provisions contained in Order 41 Rule 27 of the code of civil procedure.

16. Order 41 Rule 27 CPC- 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 ought 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 causeThe 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

17. Upon considering the provisions contained in Rule 41 Order 27 of the Code of Civil Procedure and the observations made by the Learned Appellate Court this Court is of the view that as reasons were cited in details with regard to the diligence of the petitioner/Appellant it is not necessary to consider that aspect in exercise of Supervisory Jurisdiction under Article 227 of the Constitution of India. However apart from considering the diligence of any party by the Appellate Court, the Appellate Court is also conferred with the power under Order 41 Rule 27 Sub-Rule 1(b) to allow such evidence or document to be produced or witness to be examined if 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 such direction may be exercised in the interest of justice. However this discretion can ordinarily be exercised hearing at the time of the Appeal.

18. In the case of Sanjay Kumar Singh VS State of Jharkhand reported in (2022) 7 SCC. 247 the Hon'ble Supreme Court observed as follows;

‘7. It is true that the general principle is that the appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However as an exception Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to

exist and the parties are not entitled as of right to the admission of such evidence. However at the same time where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed. Even one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate Court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

8. As observed and held by this Court in A. Andisomy Chettiar VA Subburaj Chettiar the admissibility of additional evidence does not depend upon the relevancy to the issue on hand or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not but it depends upon whether or not the appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore 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 adduced.'
19. As it is the contention of the Petitioner/Appellant that the petitioner was not occupying the suit property at the time of

institution of the suit and the fact that the petitioner suffered not only an eviction decree but also a decree of mesne profit from the date of institution of the suit, the documents sought to be filed by the petitioner cannot be totally discarded at this stage without the Appeal being heard on merits.

20. Hence this Revisional Application is allowed in part. The matter is remitted to the Learned Appellate Court to consider the necessity of producing the documents as sought to be relied upon by the petitioner in his application made under Order 41 Rule 27 of Code of Civil Procedure at the time of hearing of Title Appeal No. 43/2017 on merits pending before Learned District Judge North 24 Parganas.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury,J)