

A SATISH CHAND SURANA
v.
RAJ KUMAR MESHRAM
(Civil Appeal No. 7446 of 2021)

B DECEMBER 06, 2021

[S. ABDUL NAZEER AND KRISHNA MURARI, JJ.]

C *Code of Civil Procedure, 1908 – Or.XLI, r.27 and s.107 – Dismissal of main appeal by First Appellate Court without deciding application for additional evidence – Held: Not proper – Ordinarily, the Appellate Court should not travel beyond the record of the lower court – s.107 CPC carves out an exception to this general rule, enabling the Appellate Court to take additional evidence subject to conditions prescribed in Or.XLI, r.27 CPC – Thus, grant or refusal of opportunity for production of additional evidence at the appellate stage is within the discretion of the appellate court – The First Appellate court, being the last court of facts and evidence, should permit the production of additional evidence where the explanation furnished by the party is satisfactory and the documents in question are vital to establish the case.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No.7446 of 2021.

From the Judgment and Order dated 20.06.2019 of the High Court of Chhattisgarh at Bilaspur in FA No.433 of 2018.

F Ashutosh Ghade, Ms. Manju Jetley, Advs. for the Appellant.
The following Order of the Court was passed:

ORDER

Leave granted.

G (2) The appellant herein was the plaintiff in Civil Suit No.30A/2017 on the file of the First Additional District Judge, Balode, and the respondent was the defendant. The parties are referred to by their respective ranking before the Trial Court.

H (3) The plaintiff filed the said suit for specific performance of the Agreement dated 26.08.2015 said to have been executed by the defendant

in favour of the plaintiff for sale of property No.395 and 396/1 having area 0.59 hectare and 0.05 hectare respectively, totally measuring 0.64 Hectare situated at Village Jagtara, Patwari Halka No.22, Balode. The suit was proceeded *ex-parte*. On appreciation of the materials placed on record, the Trial Court dismissed the suit. A

(4) The plaintiff filed an appeal, F.A. No.433 of 2018 before the High Court of Chhattisgarh challenging the aforesaid judgment. During the pendency of the appeal, the plaintiff filed an application under Order 41 Rule 27 of the Code of Civil Procedure (for short, 'CPC') for production of additional evidence. The High Court dismissed the appeal by the impugned judgment, without considering the said application. The plaintiff has challenged the legality and correctness of the judgment of the High Court in this appeal. B C

(5) Though notice was served on the respondent/defendant but no one has entered appearance on his behalf.

(6) Heard learned counsel for the appellant and perused the materials placed on record. D

(7) Learned counsel for the appellant-plaintiff submits that the High Court has dismissed the first appeal of the plaintiff without deciding the application filed by him under Order XLI Rule 27 of the CPC, seeking permission to adduce the additional evidence. Learned Counsel further submits that the appellant has a good case on merits. E

(8) It is well-settled that, ordinarily, the Appellate Court should not travel beyond the record of the lower court. Section 107 of the CPC carves out an exception to this general rule, enabling the Appellate Court to take additional evidence subject to the conditions prescribed in Order 41 Rule 27 of the CPC. Thus, grant or refusal of the opportunity for production of additional evidence at the appellate stage is within the discretion of the appellate court. Dismissal of the main appeal without deciding the application for additional evidence would result in miscarriage of justice. The First Appellate court, being the last court of facts and evidence, should permit the production of additional evidence where the explanation furnished by the party is satisfactory and the documents in question are vital to establish the case. F G

(9) It is also necessary to observe here that the application for permission to file additional evidence should contain the list of documents giving full particulars thereof and copies sought to be filed as additional H

A evidence should be served on the other side. However, the High Court cannot completely ignore the application filed by the appellant and pronounce the judgment. If the appellant makes out a case for allowing the application, the material produced along with the application has to be considered at the time of final disposal of the appeal in accordance with law.

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(10) In the instant appeal, it is clear that the High Court has proceeded to dismiss the appeal without considering the application filed by the appellant-plaintiff. In our view, the High Court has to consider the matter afresh in the light of the observations made above.

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(11) In the result, the appeal succeeds and is accordingly allowed in part. The judgment of the High Court impugned herein is set aside. The matter is remitted back to the High Court for fresh disposal in accordance with law and in view of the observations made above.

(12) Pending application(s), if any, shall stand disposed of. There will be no order as to costs.

Bibhuti Bhushan Bose

Appeal partly allowed.