

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No. : 303 of 2026****Decided on : 19.06.2026**

Madan Lal

...Petitioner

Versus

Suresh Kumar (deceased) through LRs & Anr.

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.*Whether approved for reporting?*¹ Yes.For the petitioner : Mr. Lokesh Thakur, Advocate,
vice Mr. G.R. Palsra, Advocate.

For the respondents : None.

Virender Singh, Judge (Oral)

The petitioner has filed the present petition under Article 227 of the Constitution of India, against the order dated 25.05.2026, passed by the Court of learned District Judge, Kullu, District Kullu, H.P. (hereinafter referred to as 'the First Appellate Court').

2. As per the factual position as narrated in the petition, petitioner Madan Lal had preferred the appeal against the judgment and decree dated 30.06.2025, passed by the Court of learned Senior Civil Judge, Kullu, District Kullu, H.P. (hereinafter referred to as 'the trial Court'), in

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*



Civil Suit No. 115 of 2018, titled as 'Madan Lal Versus Suresh Kumar & Anr.'.

3. During the pendency of the appeal, the petitioner had moved an application under Order 41 Rule 27 of CPC, for enabling him to prove the documents i.e. Patta, in accordance with law. Said application has been decided by the learned First Appellate Court, vide order dated 25.05.2026, and as per the zimni orders, the main appeal has now been listed for 30.06.2026, for final hearing.

4. On this technical ground, the petitioner has prayed that the order dated 25.05.2026, may kindly be set aside, as the application under Order 41 Rule 27 CPC, is to be decided along with the main appeal, not separately.

5. In order to buttress his contentions, learned counsel has relied upon the decision of Hon'ble Supreme Court in '**State of Rajasthan Versus T.N. Sahani and others, (2001) 10 SCC 619**'.

6. The order dated 25.05.2026, has been assailed on the ground that the said application should have been decided along with the main appeal.



7. Admittedly, the main appeal has not been decided by the learned First Appellate Court and the application under Order 41 Rule 27 CPC should have been decided along with the main appeal.

8. It is apt for this Court to reproduce relevant paragraph 4 of **State of Rajasthan Versus T.N. Sahani and others** case (supra):-

“4. It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy, AIR 1963 SC 1526, pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the document and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.”



9. Similar view has again been taken by the Hon'ble Supreme Court in **Eastern Equipment & Sales Limited Versus Ing. Yash Kumar Khanna, (2008) 12 SCC 739**. Relevant paragraphs 5 to 7, of the judgment, are reproduced, as under:-

"5. We have heard learned counsel for the parties and after considering the facts and circumstances of the present case, we are of the view that in order to decide the pending appeal in which the application under Order 41 Rule 27 of the Code of Civil Procedure was filed ought to have been taken by the appellate court along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure.

6. In that view of the matter and without going into the merits as to whether the application under Order 41 Rule 27 of the Code of Civil Procedure was rightly rejected by the appellate court as well as by the High Court, we set aside the order of the High Court as well as of the appellate court rejecting the application under Order 41 Rule 27 of the Code of Civil Procedure and we direct that the appellate court shall decide the pending appeal along with the application under Order 41 Rule 27 of the Code of Civil Procedure on merits within a period of three months from the date of supply of a copy of this order to the appellate court. The appeal is allowed to the extent indicated above. There will be no order as to costs.

7. The view that we have expressed can be supported by a decision of this Court in Jaipur Development Authority v. Kailashwati Devi, (1997) 7 SCC 297."

10. In view of the above, the order dated 25.05.2026, does not stand in the judicial scrutiny, by this Court, as the application under Order 41 Rule 27 CPC is to be decided along with the main appeal, not separately. As such, the present petition is allowed and order dated 25.05.2026, is set aside.



11. The learned District Judge, Kullu, is requested to take up the application under Order 41 Rule 27 CPC along with the main appeal, at the time of its final hearing.

12. Consequently, application under Order 41 Rule 27 CPC is ordered to be revived to its original number.

13. Pending application(s), if any, shall also stand(s) disposed of.

19th June, 2026
(*Pramod Kumar*)

(Virender Singh)
Judge