



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.950 of 2025

(In the matter of an application under Article 227 of the Constitution of India)

Makeswar Jha

....

Petitioner

-versus-

***State of Odisha, represented ...
through its Commissioner-cum-
Secretary, Urban Development
Department and Others***

Opposite Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. Jagabandhu Sahu, Advocate

For Opp. Parties : Mr. T.K. Dash, AGA

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

16th December, 2025

B.P. Routray, J.

1. Heard Mr. J. Sahu, learned counsel for the Petitioner and Mr. T.K. Dash, learned AGA for State - opposite parties.
2. Present CMP is directed against order dated 2nd May, 2025 of learned 1st Appellate Court, i.e. District Judge, Balangir passed in RFA No.87 of 2022, wherein prayer of the petitioner under Order 41 Rule 27 C.P.C. has been rejected.



3. Present petitioner is the plaintiff who filed CS No.73 of 2013 before the learned Additional Senior Civil Judge, Balangir and the same was dismissed on contest. Against the same the petitioner preferred RFA No.87 of 2022 before the District Judge and during pendency of the appeal he filed a petition on 5th March, 2025 to adduce additional evidence presenting certain documents in his favour. Such prayer of the appellant to adduce additional evidence in the appeal was rejected vide impugned order dated 2nd May, 2025 on the ground that the appellant has not explained any reason with regard to justification for failure to produce such documents in course of trial.

4. The scope of the provisions under Order 41 Rule 27 of C.P.C. is limited and it is settled that it has to be exercised in exceptional circumstances upon satisfaction of the party regarding exercise of due diligence. In ***Erach Boman Khavar v. Tukaram Sridhar Bhat and another, (2014) 1 OLR SC 544*** it is observed that, “*party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial inspite of*



exercise of due diligence and that the evidence could not be produced as it was not within his knowledge”.

5. In ***Sanjay Kumar Singh v. The State of Jharkhand, (2022) 7***

SCC 247 it has been observed as follows:-

“4. 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 is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature. As observed and held by this Court in the case of ***A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713***, 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.”

6. Further in ***Union of India v. K.V. Lakshman and Others, (2016)***

13 SCC 124 it is held as follows:-

“37. Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate Court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject matter of the lis, the Court should allow the party to file such additional evidence. After all, the Court has to do substantial justice to the parties. Merely because the Court allowed one party to file additional evidence in appeal would not by itself mean that the Court has also decided the entire case in his favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate Court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal.”

7. Now coming to the case at hand, it is seen from the petition of the appellant filed under Order 41 Rule 27 (Annexure-4) that no such ground has been explained by him to discharge his action for



non-producing those documents in course of trial. The appellant did not bother to whisper a word with regard to the vital requirement under Order 41 Rule 27 to justify that he has exercised his utmost care and due diligence in order to bring those documents in course of trial. Undoubtedly, the documents sought to be adduced in additional evidence were there prior to filing of the suit and within the knowledge of the plaintiff-appellant. Therefore seeking to introduce those documents by way of additional evidence in the 1st appeal without explaining the reasons thereof failing to produce the same in course of trial, may not be permitted at this stage. The learned 1st Appellate Court has elaborately dealt with these aspects in the impugned order to reject such prayer of the appellant. In absence of any explanation given by the appellant in his petition under Order 41 Rule 27 such prayer of the appellant has been rightly refused by the 1st Appellate Court.

8. Resultantly this court does not find any infirmity in the impugned order to interfere. The CMP is dismissed.

(B.P. Routray)
Judge