



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 8964/2021

Shankar Lal Saini S/o Late Kalyanmal Saini, Aged About 62 Years, R/o House No. 2323, Dai Ki Gali, Girdharilal Ji Bhargav Ka Makan, Ghee Walon Ka Rasta, Johari Bazar, Jaipur (Rajasthan)

-----Petitioner

Versus

1. Smt Nagina Patoliya W/o Shri Dharam Chand Patoliya, R/o Patoliya House, New Colony, Paanch Batti Ke Pass, Jaipur (Rajasthan)
2. Ramkumar Saini S/o Late Kalyanmal Saini, R/o House No. 2323, Dai Ki Gali, Girdharilal Ji Bhargav Ka Makan, Ghee Walon Ka Rasta, Johari Bazar, Jaipur (Rajasthan)

-----Respondents

For Petitioner(s)	:	Mr.Suresh Kumar Sahani with Mr.Ram Babu Sharma
For Respondent(s)	:	Mr.R.K. Daga with Mr.M.L. Sharma, Mr.Aanjnaiy Sharma & Mr.Rajanikant Tijara

JUSTICE ANOOP KUMAR DHAND

Order

14/08/2025

Reportable

1. By way of filing this writ petition, a challenge has been led to the impugned order dated 06.08.2021 passed by the Appellate Rent Tribunal, Jaipur Metro-I (hereinafter referred to as "the Appellate Tribunal") rejecting the application submitted by the petitioner under Section 151 CPC for deciding the application submitted by the petitioner under Order 41 Rule 25 read with Rule 27 CPC for taking additional evidence on the record.





2. Learned counsel for the petitioner submits that an application under Section 9 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the Act of 2001") was submitted by the respondents against the petitioner on the ground of default in payment of the rent. The same was allowed by the Tribunal vide order dated 04.12.2019 against which an appeal was preferred by the petitioner before the Appellate Tribunal.

3. Counsel submits that during pendency of the said appeal, an application under Order 41 Rule 25 and Rule 27 CPC read with Section 151 CPC was submitted by the petitioner with the averment that the eviction application was submitted by the respondents on the ground of default and the rent was not paid by the petitioner in spite of receipt of notice dated 22.04.2009.

4. Counsel submits that the said application submitted by the petitioner was kept pending till final disposal of the appeal submitted by the petitioner vide order dated 06.08.2021.

5. Counsel submits that at this stage, an application under Section 151 CPC was submitted before the Appellate Court with a request to decide the said application first before deciding the appeal. Counsel submits that in stead of deciding the application filed by the petitioner under Order 41 Rule 25 read with Rule 27 CPC, the application filed by the petitioner under Section 151 CPC has been rejected.

6. Counsel submits that the Hon'ble Apex Court in the case of **North Eastern Administration Gorakhpur Vs. Bhagwan** reported in **2008 (8) SCC 511**, has held that the application submitted under Order 41 Rule 27 CPC should be decided first before taking up the appeal on its merits. Counsel submits that



going contrary to the aforesaid proposition of law, as laid down by the Hon'ble Apex Court, the application submitted by the petitioner under Section 151 CPC has been rejected.

7. Counsel submits that a direction be issued to the Appellate Court to decide the application submitted by the petitioner under Order 41 Rule 25 and 27 CPC first before deciding the appeal on its merits.

8. *Per contra*, learned counsel for the respondents opposes the arguments raised by counsel for the petitioner and submits that the application filed by the petitioner under Order 41 Rule 25 & 27 CPC has not been rejected by the Appellate Court rather the same has been kept pending for disposal along-with the appeal and in this regard, an order has already been passed on 06.08.2021. Counsel submits that no documentary evidence has been produced with the application submitted by the petitioner, hence, under these circumstances, the Appellate Court has not committed any error in rejecting the application submitted by the petitioner under Section 151 CPC. Hence, interference of this Court is not warranted.

9. Heard and considered the submissions made at the Bar and perused the material available on record.

10. Perusal of the record indicates that against the eviction order dated 04.12.2019 passed against the petitioner, he has preferred an appeal before the Appellate Tribunal and the same is still lying pending for its adjudication on merits and in the meantime, he submitted an application under Order 41 Rule 25 & 27 CPC for taking additional evidence on record, however, the Appellate Tribunal vide its order dated 06.08.2021 has posted this



application for its disposal at the time of final hearing of the appeal.

11. At this state, an application was submitted by the petitioner under Section 151 CPC for deciding the application filed by the petitioner under Order 41 Rule 25 & 27 CPC prior to deciding the appeal on its merits.

12. Now, the question remains for consideration of this Court is "whether the application filed by the petitioner under Order 41 Rule 25 & 27 CPC is required to be decided first by the Appellate Court or its is required to be decided with the appeal?"

13. The provisions contained under Order 41 Rule 25 CPC deals with the power of the Appellate Court for framing of additional issue and referring the matter to the Trial Court if deems necessary. Similarly, the provisions contained under Rule 27 Order 41 deals with the power of Appellate Court allowing the parties to produce additional evidence at the appellate stage.

14. For ready reference, both the provisions are quoted as under:-

"25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.- Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor [within such time as may be fixed by the Appellate Court or extended by it from time to time.]

**27. 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 cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

15. The issue involved in this writ petition has already been set at rest by the Hon'ble Apex Court in the case of **Union of India Vs. Ibrahim Uddin & Ors.** reported in **2012 (8) SCC 148** wherein it has been held by the Hon'ble Apex Court that the application for taking additional evidence on record, at an appellate stage, even if filed during pendency of Appeal, is to be heard at the time of final hearing of the Appeal, at a stage when after appreciating evidence on record, Court reaches to the conclusion that additional evidence was required to be taken on record in order to pronounce judgment or for any other substantial cause. It has been held in Paras 49 & 52 as under:-

"49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of



appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. 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. 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. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh and Natha Singh and Ors. v. The Financial Commissioner, Taxation.)

52. Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and



complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/in executable and is liable to be ignored.”

16. It has been held by the Hon’ble Apex Court in a later view in the case of **Ibrahim Uddin** (supra) that the stage of consideration of application under Order 41 Rule 27 CPC is at the time of hearing of appeal on merits and it has categorically been held that in case the application for taking additional evidence on the record has been considered and allowed prior to hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on the record to pronounce the judgment or not.

17. In the case of **D.V. Lakshmana Rao Vs. State of Karnataka** reported in **2001 (4) KLJ 185**, the Karnataka High Court has held whenever there are conflicting judgments, the later will prevail over the previous. It has been held that if there are two conflicting views of the Hon’ble Apex Court with equal number of Judges, the later will prevail over the earlier, but when the earlier judgment is of a Larger Bench and the later judgment is of a smaller Bench, then the decision of the Larger Bench will be binding. In the instant case, the judgment of the Hon’ble Apex Court in the case of **North Eastern Administration Gorakhpur** (supra) is a previous judgment and the view expressed by the Hon’ble Apex Court in the case of **Ibrahim Uddin** (supra) is a later view by a Bench of equal number of Judges. Hence, following the ratio as propounded in the case of **Ibrahim Uddin** (supra), it can safely be held that the application filed under Order 41 Rule



27 CPC is required to be considered at the time of deciding the appeal on merits.

18. As per Article 141 of the Constitution of India, the law declared by the Hon'ble Apex Court is binding on all the Courts within the territory of India. But, in the case of **Mattulal Vs. Radhe Lal** reported in **AIR 1974 SC 1596**, the Hon'ble Supreme Court has held that where there are two conflicting judgments of the same Court, the later judgment would be binding upon the Courts, unless the earlier decision is passed by a Larger Bench.

19. A three Judges full Bench of the Karnataka High Court in the case of **Govinda Naik G. Kalgahatagi Vs. West Patent Press Co. Ltd.** reported in **AIR 1980 Karnataka 95** had referred an issue to the Larger Bench of Five Judges to decide the following questions:-

"When there is conflict between two decisions or the decision of the Larger Bench, which rendered there decision that should be followed by the High Courts and other Courts in the Country?"

And in view of the majority opinion, the answer of the Full Bench answered the reference as follows:-

"If two decisions of the Hon'ble Supreme Court on a question of law cannot be reconciled and one of them is by a Larger Bench while the other is by the Smaller Bench, the decision of Larger Bench, whether it is earlier or later in point of time, should be followed by the High Courts and other Courts. However, if both such Benches of the Hon'ble Supreme Court consists of equal number of Judges, the later decision should be followed by the High Court and other Courts."



19. Hence, following the above principle of law, the later view taken by the Hon'ble Apex Court in the case of **Ibrahim Uddin** (supra) is to be followed.

20. In the considered opinion of this Court, the Appellate Tribunal has not committed any error in rejecting the application submitted by the petitioner under Section 151 CPC as no adverse order has been passed against the petitioner. His application filed under Order 41 Rule 25 & 27 CPC is still lying pending for adjudication before the Appellate Court and the same would be decided along-with the main appeal, preferred by the petitioner.

21. This Court finds no merit and substance in the instant writ petition. Accordingly, the writ petition stands rejected.

22. The Appellate Court is directed to decide the application submitted by the petitioner under Order 41 Rule 25 & 27 CPC along-with the appeal and before passing the final order, appropriate orders be passed on the above application, after hearing both the sides.

23. The Appellate Court is further directed to decide the main appeal itself as early as possible, preferably within a period of six months from the date of receipt of certified copy of this order.

24. Stay application and all pending application, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

Aayush Sharma /38