

Mohd. Ayub and anr. Vs. Viith Additional District Judge, Allahabad and ors.

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Court : Allahabad

Decided On : Jan-30-2002

Reported in : 2002(2)AWC911

Judge : Anjani Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 27

Appeal No. : C.M.W.P. No. 40402 of 1999

Appellant : Mohd. Ayub and anr.

Respondent : Viith Additional District Judge, Allahabad and ors.

Advocate for Def. : Manoj Kumar Singh, Adv. and ;S.C.

Advocate for Pet/Ap. : A.K. Srivastava, Adv.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. Petitioner has challenged the order dated 4.9.1999 (Annexure-6 to the writ petition) whereby an application filed under Order XLI, Rule 27. C.P.C. 82C and List 83A filed by the petitioner have been rejected by the appellate court.

2. Petitioner in his application has not given reasons for not filing the evidence during the trial and has not given reason to the satisfaction of the appellate court for not filing the same before the trial court. The respondents have filed their objection to the said application wherein they have stated that the affidavit filed by the petitioners along with their application is wholly false and this application filed by the petitioner is not in accordance with the provisions of Order XLI, Rule 27 due to which the documents filed along with this application 82C are not worthy to be accepted as additional evidence. The appellate court has arrived at the conclusion that the filing of the additional evidence are not such which may attract the provisions of Order XLI, Rule 27 and the appellate court has observed that the documents filed along with the application 82C were filed only with a view to delay the disposal of the appeal. The appellate court without recording any finding rejected the application 82C which suffers from manifest error of law as to why provisions of Order XLI, Rule 27 are not attracted to the application filed by the petitioner.

3. In view of the aforesaid, the petition deserves to be allowed and is hereby allowed and the order dated 4.9.1999 (Annexure-6 to the writ petition) passed by the respondent No. 1 is quashed. The documents filed along with application 82C shall be admitted. The appeal be decided preferably within six months from the date of presentation of certified copy of this order before the respondent No. 1.

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