

Laxmi Narayan and Others Vs. Surendra Kumar and Others

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Court : Rajasthan

Decided On : Jul-28-2011

Judge : Mahesh Bhagwati, J.

Acts : Code of Civil Procedure (CPC) , - Order 41 Rule 27

Appeal No. : S.B. Civil Writ Petition No.3712 of 2011; S.B. Civil Misc. Stay Application No. 3341 of 2011

Appellant : Laxmi Narayan and Others

Respondent : Surendra Kumar and Others

Advocate for Pet/Ap. : Mr. Saransh Saini, Adv

Judgement :

1. By way of the instant writ petition, the petitioners have implored to quash and set-aside the order dated 27th January, 2011, whereby the learned Additional District Judge No.1, Kishangarh Bas, District Alwar decided his application filed under Order 41 Rule 27 of CPC.

2. Having considered the submissions made by the learned counsel for the petitioner and carefully perused the impugned order it is noticed that the learned Additional District Judge allowed the written statement Ex.A/1 to be taken on record as additional evidence at the cost of Rs. 1000/- and dismissed rest of the prayer with regard to taking other documents on record.

3. It is revealed from the impugned order that written statement Ex.A/1 was filed by the defendant in the Court. This document was exhibited, which suggest that this document must have been filed in the Court, but the same was not available on record. The petitioner obtained the certified copy of this document on 20.2.2009 and sought leave to file the same as additional evidence under Order 41 Rue 27 CPC. The learned Additional District, albeit decided the application to this extent in his favour, but arbitrarily imposed the cost of Rs. 1000/- without assigning any reason. Since the imposition of cost is found to be totally uncalled for, hence the order of imposing cost deserves to be set-aside. So far as the other documents are concerned, they existed during the pendency of the suit, but the petitioner never endeavoured to file them in the court. It is wrong to say tha the documents were in his knowledge and he could not obtain them even after exercise of due diligence. The application of the petitioner with regard to these documents is not found to have bee covered by any of the provisions of Rule 27 of Order 41 of CPC. The appellate court is found to have committed no error in exercising its jurisdiction under Rule 27 of Order 41 CPC and has rightly dismissed the application to the extent of other documents. The impugned order is found to be just and proper, which warrants no intervention.

4. For the reasons stated above, the writ petition partly succeeds. The impugned order dated 27.1.2011 is modified to the extent of setting aside the cost of Rs. 1000/- imposed by the learned Additional District Judge No.1, Kishangarh Bas, District Alwar on the petitioner. Rest of the impugned order stands maintained.

5. Consequent upon the disposal of writ petition, the stay application, filed therewith, does not survive and that also stands disposed of.

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