

Devdhar Vs. Aaskaran and Another

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Court : Chhattisgarh

Decided On : Mar-22-2012

Judge : Prashant Kumar Mishra

Appeal No. : Writ Petition 227 No 181 & 182 of 2012

Appellant : Devdhar

Respondent : Aaskaran and Another

Judgement :

Oral Order

(1) Petitioner is aggrieved by the order passed by the first appellate court dismissing his application under Order 41 Rule 27 of CPC and thereafter fixing the appeal itself for final hearing.

(2) Learned counsel would submit that whenever an application for taking additional evidence on record is moved under Order 41 Rule 27 of CPC the same is to be decided along with the hearing of the appeal itself and not at an interim stage. However, ignoring the said settled position of law the first appellate court has passed the impugned order which is palpably illegal.

(3) In the matter of State of Rajasthan v. T.N. Sahani and Ors. JT 2000 (Suppl.3) SC 90 the Hon'ble Supreme Court while considering the provisions of Order 41 Rule 27 of CPC has held thus:

"This is entirely for the Court to consider, at the time of hearing of the appeal on merits, whether the documents which are sought to be filed as additional evidence, need to 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 documents and for that purpose, amended provisions of Order 41, Rule 27 (b) C.P.C. can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal."

(4) In view of the said settled position of law, the impugned order is set aside.

(5) The first appellate court is directed to reconsider the application under Order 41 Rule 27 of CPC and decide it along with pending first appeal itself.

(6) Since this order is passed at admission stage without hearing other side, the respondents would be at liberty to move an application for modification/clarification on any admissible ground.

(7) With the above observation, the writ petition stands allowed.

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