(2024) 02 CHH CK 0005

Chhattisgarh High Court

Case No: Second Appeal No. 33 Of 2021

State Of Chhattisgarh	APPELLANT
Vs	
Ramavtar Goyal	RESPONDENT

Date of Decision: Feb. 2, 2024

Acts Referred:

- Limitation Act, 1963 - Article 58, 100
- Code of Civil Procedure, 1908 - Section 80, 80(1), 80(2), 80(3), 96, 100, 107, 115, Order 39 Rule 1, Order 41 Rule 27, Order 41 Rule 27(b)

Hon'ble Judges: Coram Bench Acts Result Narendra Kumar Vyas,J

Bench: Single Bench

Advocate: Avinash K. Mishra,U.N. Awasthi,Himanshu Pandey

Final Decision: Dismissed

Judgement

Narendra Kumar Vyas, J

1. This appeal has been preferred by the appellants/defendants under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the judgment and decree dated 18.02.2020 passed by the learned District Judge, Rajnandgaon (C.G.) in Civil Appeal No.91-A/2019, whereby the lower appellate Court has allowed the appeal filed by the respondent/ plaintiff and set aside the judgment and decree dated 10.07.1987 passed by the Civil Judge, Class-I, Rajnandgaon (C.G.) in Civil Suit No. 183A/1986 whereby the suit filed by the plaintiff has been decreed in defendant's favour.

2. The parties to this appeal shall be referred to hereinafter as per their description in the civil suit.

3. This appeal has been admitted by this Court on 05.03.2021 on the following substantial questions of law:-

(i) Whether the First Appellate Court is justified in holding that the suit is within limitation by recording a finding perverse to be record?

(ii) Whether the First Appellate Court is justified in holding that the suit is maintainable without service of notice under Section 80 of the CPC by recording a finding perverse to the record?

(iii) Whether the First Appellate Court is justified in admitting additional evidence under Order 41 Rule 27 of CPC by recording a finding perverse to the record?

4. Briefly stated the facts of the case are that plaintiff/respondent filed a civil suit for declaration that order dated 02.09.1975 issued by defendant No. 3 be declared as null and void and he be reinstated with all service benefits including promotion, seniority contending that he was working as Teacher under the Government of Madhya Pradesh since 18.09.1961. Defendant No. 3 District Education Officer, Rajnandgaon dismissed him

from the service on 05.06.1975. Later on this order was revoked and he was taken back in the service and again he was dismissed from service on 02.09.1975. This order was confirmed by the appellant No. 2 Divisional Education Officer, Durg vide order dated 16.07.1977. The plaintiff further stated that he made representation to the higher authorities against his dismissal from service, but no action has been taken. Thereafter on 03.07.1980 the plaintiff sent notice under Section 80 of the Civil Procedure Code, but the appellants did not take any action on the notice which has necessitated him to file a civil suit on 15.07.1980. The plaintiff has also sought leave to file suit as per Section 80(2) of the CPC contending that the plaintiff has submitted representation to the defendant demanding justice but no justice has been done with him, therefore, he has sent notice on 03.07.1980. It has also been contended that if the suit is filed after 60 days then it may be time barred, as such he is claiming leave to file suit looking to the exigency and seriousness of the matter.

5. The learned Trial Court granted the leave by registering the suit on 16.07.1980 and also issued notice to the defendant. The plaintiff has also filed an application under Order 39 Rule 1 CPC for grant of interim injunction of stay of order of dismissal from service. The defendant has filed reply to the said application and the learned Trial Court vide its order dated 07.01.1981 has rejected the same.

6. Defendants resisted the suit filed by the plaintiff stating that after reinstatement of the plaintiff they received complaints from the parents of the students that the plaintiff has misbehaved and beaten the students. It has been further contended that the District Education Officer on the basis of complaint dated 19.06.1975 has inspected the school and it was found that plaintiff was absent on 22.06.1975, as such, the impugned order dated 02.09.1975 is legal and justified. It has also been contended that the plaintiff has remedy available under the Service Law as such also the suit is not maintainable. The defendants have also contended that the plaintiff has not complied with the provisions of Section 80 of the CPC, as such, the suit is not maintainable. It has also been contended that the suit is barred by limitation as the cause of action arose on 02.09.1975 and suit was filed on 15.07.1980. It has also been contended that in fact by order dated 16.07.1977 no cause of action is arose and would pray for dismissal of the suit.

7. The learned trial Court on the pleadings of the parties has framed as many as 4 issues which read as under:-

8. The plaintiff to substantiate his case has examined himself and exhibited documents i.e. order dated 05.06.1975 (Ex.P/1), order dated 07.07.1978 (Ex.P/2), order dated 02.09.1975 (Ex.P/3), Notice dated 03.07.1978 (Ex.P/4), postal receipts (Ex.P/5 to P/9), order dated 11.02.1972 (Ex.P/10). The plaintiff has deposed before the learned Trial Court that he was permanent employee and no departmental inquiry was pending against him. He has also stated that he has made representation to the higher authority demanding justice and the defendant No.2 vide its order dated 16.07.1976 has directed the defendant No. 3 to reopen the file and do justice with the plaintiff but no action has been taken therefore, he has sent notice under Section 80 of the CPC. The plaintiff was extensively cross-examined by the defendant wherein he has stated that no inquiry has been conducted against him and he has also preferred an appeal.

9. The defendants to substantiate their case has examined Shankar Lal Dewangan, Assistant Education Officer and exhibited documents memo dated 21.07.1975 (Ex.D/1), dismissal order dated 02.09.1975 (Ex.D/2), complaint dated 07.08.1975 (Ex.D/3), complaint dated 19.08.1975 (Ex.D/4), Memo dated 11.08.1975 (Ex.D/5), Complaint dated 23.08.1975 (Ex.D/6), Complaint dated 19.08.1975 (Ex.D/7), Complaint dated 22.08.1975 (Ex.D/8), report dated 22.08.1975 (Ex.D/9), Questionnaire put to plaintiff in the inquiry (Ex.D/10), Complaint dated 22.08.1975 (Ex.D/11), Inspection report (Ex.D/12), report prepared from Attendance Record (Ex.D/13), Enquiry Report (Ex.D/14). Upon appreciation of the oral and documentary evidence adduced by the parties, learned trial Court by its judgment and decree dated 10.07.1987 held that the dismissal of the plaintiff was not valid, however, the suit is barred by limitation and since no proper compliance of Section 80(1) CPC was done by the plaintiff, as such, the suit is not maintainable and accordingly it is dismissed.

10. Being aggrieved by the dismissal of suit the plaintiff preferred first appeal under Section 96 of Civil Procedure Code on 26.09.1987 before the Learned district Judge, Rajnandgaon which was registered as Civil Appeal No. 17-A/1987. In view of constitution of MP State Administrative Tribunal the appeal was transferred to MP State Administrative Tribunal, Jabalpur and matter was remained pending there and subsequently on abolition of administrative tribunal the matter has been again transferred to learned District Judge Rajnandgaon on 20.01.2003. The main contention of the appellant in the appeal is that the learned trial Court has committed illegality in holding that suit is barred by limitation as per the Limitation Act, 1963 the provisions of Article 58 and Article 100 of the Limitation Act is not applicable in the present facts of the case and the learned trial Court has failed to appreciate that the suit is neither ‘declaratory suit, simplicitor nor a suit for alteryx’. It has also been contended that learned trial Court failed to see that the provisions of Section 80 CPC so amended are not mandatory and as per Section 80(2) he has sought the leave which was considered and the suit was not returned back to the plaintiff, therefore, dismissal of the suit for non-compliance of Section 80 of CPC is erroneous. It has also been contended that the defendants have participated in the proceedings, made pleadings, as such, dismissal of the suit on the count that compliance of Section 80 CPC has not been done is illegal and would pray for setting aside the judgment and decree. During pendency of the appeal the plaintiff has moved an application under Order 41 Rule 27 of the CPC for taking additional documents on record i.e. order of defendant No. 2 directing consideration of plaintiff’s representation and the decision dated 16.07.1977 taken by the State Government to reinstate those teachers who are removed illegally and document dated 16.07.1977 wherein the defendant No. 2 directed Defendant No. 3 to consider the case of the plaintiff as per instruction dated 21.05.1977, postal receipt and acknowledgment. The learned First Lower Appellate Court has rejected the same while deciding the appeal by recording its finding that the plaintiff has not made any attempt to bring

the said document on record during the trial and on merits the learned First Appellate Court has recorded its finding that the suit barred by the limitation and accordingly it has dismissed the appeal.

11. Being aggrieved with this judgment and decree the plaintiff has preferred Second Appeal before this Court which is registered as S.A. No. 27/2007 and this Court vide judgment and decree dated 05.11.2019 has allowed the appeal. The operative part of the judgment reads as under :-

"9. In my considered opinion, rejection of the plaintiff's application under Order 41 Rule 27 of the CPC refusing to admit additional documents is absolutely unsustainable and bad in law. Accordingly, it is set aside and consequent thereto, the impugned judgment and decree passed by the first appellate Court is also set aside. The matter is remitted to the first appellate Court. The first appellate Court would permit the plaintiff to lead evidence on the basis of said additional documents and the defendants will also be entitled to file rebuttal documents and also entitled to lead evidence and thereafter after hearing Jebthe parthe the parties would consider and decide the first appeal within three months from the date of receipt of copy Court of the orderia Parties are directed to appear before the concerned first appellate Court on 2nd December, 2019. This Court has only answered substantial questions of law No.1 and 2 framed on 4.10.2019. However, plea of limitation and all other grounds would be considered afresh by the first appellate Court."

12. Thereafter, the learned District Judge Rajnandgaon has fixed the matter on 02.01.2020 for recording of additional evidence of the plaintiff as per the order passed by this Court on 19.11.2019. The plaintiff examined himself and the defendant sought time to lead further evidence. Therefore, the appeal was adjourned to 14.01.2020 and 24.01.2020 on 01.02.2020 but on 01.02.2020 the defendants have closed their opportunity to lead additional evidence and after hearing the parties the learned First Appellate Court vide its judgment dated 18.02.2020 allowed the first appeal with cost by recording its finding that in view of Ex.P/15 the cause of action start from 16.07.1977, it is continued and plaintiff has filed the suit on 15.07.1980, as such it is within limitation and declared the order dated 02.09.1975 null and void and directed for granting all consequential benefits from 02.09.1975. The learned trial Court has committed illegality in holding that suit is barred by limitation and accordingly it has rejected the same. The learned trial Court has also recorded its finding that the defendants have not produced any document to rebut documents produced by the plaintiff along with the application filed by him under Order 41 Rule 27 of the CPC and after appreciating the documents it has passed the impugned order.

13. Assailing the same defendants have filed present Second appeal mainly contending that compliance of Section 80 of the CPC by the learned Appellate Court is erroneous and it has committed grave illegality in granting service benefits and consequential relief without payment of Court fee and the suit was barred by limitation therefore, the same deserves to be quashed. The appeal has been admitted by this Court on the substantial question of law framed on 05.03.2021.

14. I have heard learned counsel for the parties and perused the record.

Finding on substantial question of law No. (i).

15. The learned counsel for the State would submit that the learned First Appellate Court has committed illegality in reversing the well reasoned finding recorded by the learned Trial court with regard to the fact that the suit is barred by limitation. He would submit that the plaintiff was dismissed from service on 02.09.1975 but he has filed the suit on 15.07.1980 as such it is barred by limitation in view of Article 58 of the Limitation act, 1963 as the limitation of 3 years has been prescribed under this Article. This was vehemently objected by the learned counsel for the plaintiff/respondent and contended that learned First Appellate Court has rightly recorded its finding that suit is within limitation. From bare perusal of the additional evidence adduced by the plaintiff before the First Appellate Court and exhibiting the documents, the representation of the plaintiff (Exhibit P/11), postal envelope with acknowledgement Card (Ex P/12), Appeal to the His Excellency the Governor of Madhya Pradesh on 31.07.1975 (Ex P/13), Postal receipt (Ex P/14) and Memo dated 16.07.1977 (Ex P/15) wherein the Divisional Education Officer has directed District Education Officer to take decision as per circular of the State Government 21.05.1977, but no action has been taken and the plaintiff has filed the Suit on 15.07.1980 thus within 3 years when the right to sue first accrues as per Article 58 of the Limitation Act.

16. Considering the factual matrix, evidence brought on record and provisions of Article 58 of the Limitation Act, the finding recorded by the learned First Appellate Court that suit is within limitation cannot be found faulty or erroneous which warrants interference by this Court. Accordingly, the substantial question of law (i) answered against the appellant/defendant and in favour of the plaintiff and it is held that the finding recorded by the learned First Appellate Court that suit is within limitation is legal and justified.

Findings on substantial question of law No. (ii)

17. Learned counsel for the appellant-State would submit that there is no compliance of Section 80 of CPC still the learned Trial Court has held that there is substantial compliance of the Section 80 is perverse and contrary to the law, as such this finding deserves to be set aside by this Court.

18. Learned Senior counsel for the respondent would submit that the plaintiff in para 4 of the plaint has clearly sought leave to file appeal under Section 80(2) of CPC which was granted by the trial Court by registering the suit and proceeding with the suit till judgment and decree was passed. He would further submit that the plaintiff has also filed an application under Order 39 Rule 1 CPC for claiming temporary injunction as there is urgency in the matter and also explained if suit is filed after 60 days then it will become barred by limitation. He would further submit that in case the trial Court would not have granted leave to file the suit before expiry of notice period the plaint would have been returned to the plaintiff for filing after notice period as per the provisions of Section 80(2) of the CPC. He would further submit that after 43 years from the filing of the suit such hypertechnical view is taken it would amount to perpetuate miscarriage of justice as such he would pray for answering the second substantial question of law in favour of the plaintiff.

19. For better understanding the substantial question of law it is necessary for this Court to extract Section 80 of the CPC which reads as under:-

“80 Notice

[(1)] [Save as otherwise provided in sub-section (2), no suits [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office of]

(a) in the case of a suit against the Central Government, [except where it relates to a railway] a Secretary to that Government;

[(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

[(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;]

(c) in the case of a suit against 8[any other State Government], a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (I); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be , a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (I), if in such notice

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.]”

20. From the language of Section 80 of CPC, it is clear that at the time of filing of the suit, if the plaintiff establishes that there is an urgency to seek the relief, the Court on its satisfaction may dispense with the requirement of notice as required under Section 80 CPC, before filing a suit. Ordinarily, a suit is to be filed after a notice of two months is given to the Government. In the present case, such a notice was given but before expiry of 60 days the suit was filed and the plaintiff sought leave to file the suit before expiry of period of 60 days as provided in Section 80 of CPC and he invoked provisions of Sub-Section (2) of Section 80. The leave was granted to the plaintiff as required under Section 80(2) of CPC. The Section provides that under this Section in case the Court feels that there is no relief to be urgently granted, it shall refuse to grant such leave, which means that the requirement of filing a suit and satisfaction of the Court is to the filing of the suit and at that time Court may refuse in its finding that there is no urgency of granting immediate relief, refuse such leave and return the plaint. Once the leave has been granted, another requirement is that in case any interim injunction is sought, the same cannot be granted unless notice is given to the respondent. As such, issuance of notice would follow only when such leave has been granted to the plaintiff for filing the suit. So, refusal to grant relief or to grant relief is to be considered at the stage when suit is sought to be filed without issuance of notice as required under Section 80 of CPC. The plaint would be returned in case, at that stage, the Court finds that there is no urgency in the suit or in passing an urgent relief. In case the interim stay sought is not granted after the leave has been granted to the plaintiff that does not mean that the plaint is to be returned on refusing to grant such injunction. Even if grant of interim relief is refused, suit filed after the leave is granted by dispensing with the requirement of notice under Section 80 CPC, the suit will continue, as such, substantial questions of law (ii) is decided, against appellants. That apart, it would be apt to mention here that the Supreme Court in Raghunath Dass v. Unionof India and another, AIR 1969 SC 674, has held that “The object of the notice contemplated by Section 80, CPC is to give to the concerned Government and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigation. The purpose of law is advancement of justice. The provisions in Section 80 are not intended to be used as booby trap against ignorant and illiterate persons.”

21. Again the Hon’ble Supreme Court in case of Bajaj Hindustan Sugar & Industries Ltd. vs. Balrampur Chini Mills Ltd. & Others; (2007) 9 SCC 43 has held in para 30, 31 and 34 as under:-

“30. There can be no dispute that once the plaint was returned, there was no suit pending before the trial Judge. Without the suit being registered the question of considering the application for interim orders also did not arise. The provisions of Section 80 (1) of the Code make it very clear that except in the manner provided in sub-Section (2), no suit can be instituted against the Government and its authorities in respect of any act purported to have been done by such authority in its official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the authorities named therein. Admittedly, the defendant Nos. 1-4 in the suit, were the Union of India and its authorities and without notice under Section 80 (1) of the Code, the suit could not have been instituted against them without compliance with the provisions of Section 80 (2) of the Code. The appellants were fully aware of the said provision and accordingly, an application was made under Section 80 (2) of the Code for grant of such leave, which was refused. Section 80(2) provides as follows:

"80. (2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1)."

31. From the above, it would be evident that a suit may be filed against the Government or a public officer without serving notice as required by sub-section (1) with the leave of the Court. When such leave is refused, the question of institution of the suit does not arise and accordingly, no interim relief could also be granted at that stage.

34. The law, in our view, has been succinctly expressed in the aforesaid judgment. The language of Section 80 (2) of the Code leads us to hold that if leave is refused by the original court, it is open to the superior courts to grant such leave as otherwise in an emergent situation a litigant may be left without remedy once such leave is refused and he is required to wait out the statutory period of two months after giving notice.”

22. Again the Hon’ble Supreme Court in case of Y. Savarimuthu vs. State of Tamil Nadu & Others reported in (2019) 13 SCC 142 has held in para 13 and 15 as under:-

“13. In another recent judgment in State of A.P. and Others v. Pioneer Builders14, this Court again referred to the Law Commission Report and held as follows:

“14. From a bare reading of sub-section (1) of Section 80, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under the said provision has been served on such Government or public officer, as the case may be. It is well-settled that before the amendment of Section 80 the provisions of unamended Section 80 admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The Section imposes a statutory and unqualified obligation upon the Court and in the absence of compliance with Section 80, the suit is not maintainable. (See: Bhagchand Dagadusa v. Secretary of State for India in Council Sawai, Singhai Nirmal Chand v. Union of India1 and Bihari Chowdhary v. State of Bihar). The service of notice under Section 80 is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the Section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in Bihari Chowdhary, the object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

15. It seems that the provision did not achieve the desired results inasmuch as it is a matter of common experience that hardly any matter is settled by the Government or the public officer concerned by making use of the opportunity afforded by said provisions. In most of the cases, notice given under Section 80 remains unanswered. In its 14th report (reiterated in the 27th and 54th Reports), the Law Commission, while noting that the provisions of this section had worked a great hardship in a large number of cases where immediate relief by way of injunction against the Government or a public officer was necessary in the interests of justice, had recommended omission of the Section. However, the Joint Committee of Parliament, to which the Amendment Bill 1974 was referred, did not agree with the Law Commission and recommended retention of Section 80 with necessary modifications/relaxations.

16. Thus, in conformity therewith, by the Code of Civil Procedure (Amendment) Act, 1976 the existing Section 80 was renumbered as Section 80(1) and sub- sections (2) and (3) were inserted with effect from 1-2-1977. Sub-section (2) carved out an exception to the mandatory rule that no suit can be filed against the Government or a public officer unless two months' notice has been served on such Government or public officer. The provision mitigates the rigours of sub- section (1) and empowers the Court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. But, the Court cannot grant relief under the sub- section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief prayed for. The proviso to the said sub-section enjoins that in case the Court is of the opinion that no urgent and immediate relief should be granted, it shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Sub-section (3), though not relevant for the present case, seeks to bring in the rule of substantial compliance and tends to relax the rigour of sub-section (1).”

15. It is clear, therefore, that there is sufficient compliance with the provisions of Section 80 CPC as has been introduced by the Amendment Act introducing section 80(3) into the Statute book. The respondents’ argument that section 80 is not expressly referred to and that the legal notice and letters were written prior to the disposal of the Writ Appeal have no legs to stand on. This is for the reason that a notice does not have to state the section under which it is made so long as the ingredients of sub- section (3) of section 80 are met. It is admitted that there was no need for any legal notice before filing the Writ Appeal. The notice, therefore, that was sent on 14.01.2000, was only under Section 80 CPC in the event the Writ Appeal failed and a Suit would have to be filed.”

23. Considering the above factual and legal position and also considering the fact that the petitioner has sought leave which has been granted as per the provisions of Section 80(2) of the CPC though it has not returned to the plaintiff for filing after the period of 60 days and also submitted representation before filing of the suit which is sufficient compliance of Section 80 of the CPC i.e. the appellants were made aware about filing of suit, therefore, the finding recorded by the learned First Appellate Court that suit is maintainable, neither suffers from perversity nor illegality. Thus the substantial question of law is answered against the appellants/defendants and in favour of the plaintiffs by holding that suit is maintainable.

Findings on substantial question of law No. (iii)

24. The learned counsel for the appellant would submit that the learned First Appellate Court has committed illegality in allowing the application filed by the plaintiff under Order 41 Rule 27 CPC at the belated stage, as such he would pray for answering the substantial question of law in favour of the appellants.

25. Learned Senior counsel for the respondent would submit that the third substantial question of law has already been decided in S.A. No. 27/2007 decided on 05.011.2019 between the same parties, as such, third substantial question of law is not required to be answered against the plaintiff and would pray for dismissal of the appeal with costs.

26. For better understanding the substantial question of law it is expedient for this Court to extract Order 41 Rule 27 of CPC which reads as under:-

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 exam med.

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

27. From bare perusal of the above stated provisions, it is quite vivid that the relevancy of the document at the time of taking additional document on record by way of application under Order 41 Rule 27 is not very much material but the learned Trial Court before taking it on record the learned First Appellate Court should consider 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. The Hon'ble Supreme Court in case of A. Andisamy Chettiar vs. A. Subburaj Chettiar reported in 2015 (17) SCC 713 has held in paragraph 12 to 19 as under:-

"12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ex.A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition, i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.

13. In K.R. Mohan Reddy v. Net Work Inc.2 this Court has held as under: -

"19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction….."

14. In North Eastern Railway Admn. v. Bhagwan Das3, this Court observed thus: -

"13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist."

15. In N. Kamalam (dead) and another v. Ayyasamy4 this Court, interpreting Rule 27 of Order 41 of the Code, has observed in para 19 as under: -

“19……. the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal - it does not authorize any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

16. In Union of India v. Ibrahim Uddin5 this Court has held 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.”

17. Learned counsel for the appellant argued before us that the High Court, in revision, at an interim stage of appeal pending before the lower appellate court, should not have interfered in the matter of requirement of additional evidence.

18. We have considered the argument advanced on behalf of the appellant and also perused the law laid down by this Court as to the exercise of revisional power under Section 115 of the Code in such matters. In Mahavir Singh and others v. Naresh Chandra6 explaining the scope of revision in the matters of acceptance of additional evidence by the lower appellate court interpreting expression “or for any other substantial cause” in Rule 27 of Order 41, this Court has held as under: -

“5. …The words “or for any other substantial cause” must be read with the word “requires”, which is set out at the commencement of the provision, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule would apply as noticed by the Privy Council in Kessowji Issur v. G.I.P. Rly. [ILR (1907-08) 31 Bom 381]. It is under these circumstances such a power could be exercised. Therefore, when the first appellate court did not find the necessity to allow the application, we fail to understand as to how the High Court could, in exercise of its power under Section 115 CPC, have interfered with such an order, particularly when the whole appeal is not before the Court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would arise and not in any other circumstances. When the first appellate court passed the order on the application filed under Order 41 Rule 27 CPC, the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, we fail to understand as to how the High Court could interfere with such an order under Section 115 CPC.”

19. In Gurdev Singh and others v. Mehnga Ram this Court, on similar issue, has expressed the view as under: -

“2. We have heard learned counsel for the parties. The grievance of the appellants before us is that in an appeal filed by them before the learned Additional District Judge, Ferozepur, in an application under Order XLI, Rule 27(b), Code of Civil Procedure (CPC) the learned Additional District Judge at the final hearing of the appeal wrongly felt that additional evidence was required to be produced as requested by the appellants by way of examination of a handwriting expert. The High Court in the impugned order exercising jurisdiction under Section 115 CPC took the view that the order of the appellate court could not be sustained. In our view the approach of the High Court in revision at that interim stage when the appeal was pending for final hearing before the learned Additional District Judge was not justified and the High Court should not have interfered with the order which was within the jurisdiction of the appellate court. The reason is obvious. The appellate court hearing the matter finally could exercise jurisdiction one way or the other under Order XLI, Rule 27 specially clause (b). If the order was wrong on merits, it would always be open for the respondent to challenge the same in accordance with law if an occasion arises to carry the matter in second appeal after an appellate decree is passed. But at this interim stage, the High Court should not have felt itself convinced that the order was without jurisdiction. Only on this short question, without expressing any opinion on the merits of the controversy involved and on the legality of the contentions advanced by both the learned counsel for the parties regarding additional evidence, we allow this appeal, set aside the order of the High Court.”

28. Considering the above stated legal position and also considered the law laid down by the Hon’ble Supreme Court in 2018 (10) SCC 484 in case of Uttaradi Muth vs. Raghvendar Swami Muth, it is mandatory that even if the additional document is taken on record by the appellate Court it has to be proved in accordance law. In the present case the plaintiff has examined himself and proved the documents thereafter the documents have been considered by the First Appellate court and also considering the fact this Court has allowed the application

under Order 41 Rule 27 CPC while deciding the Second Appeal No. 27/2007 between the same parties which has attained finality and no challenge is made to the said judgment. Thus, substantial question of law No. (iii) deserves to be answered against the appellant and in favour of the respondent/plaintiff.

29. Accordingly, all the substantial questions of law framed by this Court are answered against the appellants and consequently appeal deserves to be dismissed and accordingly it is dismissed.

30. A decree be drawn up accordingly.