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Calcutta High Court

Case No: C.O. No. 3114 of 2014

Anwar Alam Khan — APPELLANT

Vs

Zaibun Nisa — RESPONDENT

Date of Decision: Sept. 15, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: (2014) 4 CALLT 434

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: Suchit Kumar Banerjee, Indranil Banerjee and Quamruddin Khan, Advocate for the Appellant

Judgement

Sanjib Banerjee, J.
In view of the order proposed to be made, no previous service is required to be effected on the opposite parties. The petitioners will, however, remain obliged to forward copies of the petition along with copies of this order to the opposite parties. The petitioners have obtained a decree for eviction and complain of the appellate court in seisin of the title appeal entertaining the documents sought to be filed along with an application under Order XLI Rule 27 of the Code with an observation that such application would be taken up prior to the hearing of the appeal.

2. The petitioners seek to assert that, ordinarily, an application under Order XLI Rule 27 is not taken up prior to the hearing of the appeal; for, upon hearing the appeal would the appellate court be able to make up its mind whether the additional evidence sought to be relied upon was necessary to conclusively pronounce upon any matter in issue.

3. Since it appears from the orders impugned dated September 4 and 5, 2014 that the trial court has adopted an erroneous procedure of receiving the documents and posting the application for additional evidence ahead of the appeal, it will be open to the

petitioners herein to urge whatever grounds that may be available to persuade the appellate court to take up the application for additional evidence along with the appeal.

4. It is also observed that the trial court should not have received documents without requiring the documents to be proved and, in any event, without assessing whether the documents were relevant for the purpose of the adjudication of the appeal.

5. CO 3114 of 2014 is disposed of with the above observation and with liberty to the petitioners herein to raise whatever grounds may be available to the petitioners in the pending appeal. There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.