AFR
(Judgment reserved on 22.08.2017)
(Judgment delivered on 07.09.2017)

Court No. - 02
Case :- MATTERS UNDER ARTICLE 227 No. - 4904 of 2017
Petitioner :- Prahlad And 7 Others
Respondent :- Chandra Bhan And 6 Others
Counsel for Petitioner :- Amar Nath Bhargava
Counsel for Respondent :- Ashok Kumar Singh

Hon'ble Surya Prakash Kesarwani,J.

1. Heard Sri A.N. Bhargava, assisted by Sri Vishnu Pandey, learned counsel for the defendants-petitioners, and, Sri D.K. Srivastava, Sri H.K. Singh and Sri P.K. Singh, learned counsels for the plaintiffs-respondents No.1, 3, 4 & 5.

2. This petition under Article 227 of the Constitution of India has been filed praying to set aside the order dated 13.08.2017 passed by the Additional District Judge, Court No.2, Bhadohi, Gyanpur in Civil Appeal No.45 of 2015 whereby the Application being Paper No.40-C filed by the defendants-petitioners for additional evidence for getting handwriting expert report on the alleged partition deed dated 31.12.1969, was rejected.

Facts of the Case:-

3. Briefly stated facts of the present case are that contesting respondent/ plaintiff Sri Chandrabhan filed O.S. No.300 of 1999 in the Court of Civil Judge (Junior Division), Bhadohi on 18.05.1999 to seek relief of permanent injunction against the defendants-petitioners with respect to Khasra Plot No.446 measuring 6 *biswas* 17 *dhoor* situate in village Khamhriya. In paragraph-2 of the plaint he stated that he is the *Sankramniya Bhoomidhar* of the aforesaid *Khasra* Plot No.446. A written statement dated 19.08.1999 was filed by the defendants-petitioners. In paragraph-9 of the written statement, the defendants-petitioners stated that during consolidation*, Khasra* Plot No.446 was made in the name of father of the contesting respondent/ plaintiff and *Khasra* Plot No.443 was made in the name of predecessors of the defendants-petitioners and since they were belonging to one and the same family and as such, they entered into an agreement dated 31.12.1969 as per which both the plots were divided in four parts and a portion was given to the father of the contesting respondent/ plaintiff. Initially six issues were framed in the aforesaid suit on 12.09.2000. Subsequently, the defendants-petitioners moved an Application 140-C for framing one more issue. On the aforesaid Application, the issue No.7 was framed. Subsequently, when the suit was at the argument stage, the defendants-petitioners filed another Application 163-C

to amend the issue No.7 by mentioning the date of alleged compromise agreement as 31.12.1969 instead of 01.12.1969. The said Application was also allowed and the issue No.7 was, accordingly, amended as under:

> "7. क्या विवादित आराजी भूमि संख्या 443 व भूमि संख्या 446 दोनों नम्बरान के निस्वत दरम्यिान पूर्वज फरीकैन सुलहनामा इकरारनामा दिनांक 31.12.1969 तहरीर हुआ है और मुताविज विभाजन बटवारा इकरारनामा दोनों नम्बरान पर फरीकैन अपने अपने हिस्से पर काबिज दखील है? इस प्रकार प्रतिवादी/ अपीलार्थी के प्रार्थनापत्र के आधार पर वाद बिन्दु संख्या–7 विरचित किया गया।"

4. The contesting respondent/ plaintiff took the stand that the aforesaid alleged compromise agreement dated 31.12.1969 is a forged and fabricated piece of paper. After the defendants-petitioners and the contesting respondent/ plaintiff stated before the Trial Court that now they do not want to lead any other evidence, the arguments were heard and the aforesaid O.S. No.300 of 1999 was decreed. The issue No.7 was decided in favour of the contesting respondent/ plaintiff and against the defendants-petitioners. It was brought to the notice of the Trial Court that two compromise agreements being Paper No.31-C and 32-C were filed by the defendants-petitioners but they could not explain it. The name of the father of the contesting respondent/ plaintiff is recorded in the Revenue Records since consolidation in the village. The *Khasra* No.443 which the defendants-petitioners alleged to have been given to the father of the contesting respondent/ plaintiff under the compromise agreement, was sold by them by sale deeds dated 08.08.1977 and 09.07.1966. The defendants' witness Sri Hub Lal stated that in his presence, only one agreement was entered and there was no *naksha najri*. Considering the facts and evidences on record, the Trial Court found the alleged compromise agreement dated 31.12.1969 to be suspicious and not proved. The defendants-petitioners challenged the judgment of the Trial Court dated 10.11.2015 by filing a Civil Appeal No.45 of 2015. Since this appeal was pending, it appears that a petition was filed before this Court in which this Court directed the appeal to be decided within a month, which fact has been noted in the impugned order. However, the defendants-petitioners filed an Application being Paper No.40-C for handwriting expert report with respect to the compromise agreement dated 31.12.1969, which was rejected by the Appellate Court by the impugned order dated 03.08.2017. Aggrieved with this order dated 03.08.2017, the defendants-petitioners have filed the present Petition under Article 227 of the Constitution of India.

Submission of the Defendants-Petitioners:-

5. Sri A.N. Bhargava, learned counsel for the defendants-petitioners submits that the compromise agreement dated 31.12.1969 was filed in evidence and if its genuineness was being doubted, then it was the duty of the Court to call for a handwriting expert report to find out the genuineness of the compromise agreement but it was not done. This procedure was required to be followed in view of Section 73 of the Indian Evidence Act. If due to wrong advice of the counsel, the defendants-petitioners could not move such an application for handwriting expert report before the Trial Court then for that reason, defendants-petitioners cannot be made to suffer. He further submits that in the interest of justice, it is necessary that the Application 40-C should have been allowed. There was no basis for disbelieving the compromise agreement dated 31.12.1969. In support of his submissions, he relied upon the judgments of Hon'ble Supreme Court in the case of **Ajay Kumar Parmar vs. State of Rajsthan, (2012) 12 SCC 406** (para-25) and **Rafiq and another vs. Munshilal and another, (1981) 2 SCC 788** (Para-3)**.**

Submission of the Plaintiffs-Respondents:-

6. Sri P.K. Singh, learned counsel for the contesting respondent/ plaintiff refers to the provisions of Order XLI Rule 27 and submits that none of the conditions for additional evidence could be satisfied by the defendants petitioners in their Application 40-C. He refers to the facts noted in the impugned order with regard to the affording of opportunity to lead evidence to the defendants petitioners after framing of issue No.7. He submits that the sole purpose behind moving the Application 40-C was to delay the conclusion of the appeal as evident from the facts noted in the impugned order. He submits that the said Application is nothing but an abuse of process of court and it does not satisfy the principles laid in Order XLI Rule 27 C.P.C. In support of his submissions, he relied upon the decisions of this Court in the case of **Smt. Ganga Devi and another vs. Bhagwan Das and others, 2014 (106) ALR 295** (Paras-11, 12, 14, 15 and 16), **Shri Kishore and another vs. Roop Kishore, 2006 (62) ALR 414** (paras-6, 7 to 10), **Shiv Karan and others vs. Special Judge, E.C. Act and another, 2011 (1) JCLR 864 (All) (LB)** (Paras-8, 9 & 10) and the judgment of Hon'ble Supreme Court in the case of **Satish Kumar Gupta etc. vs. State of Haryana and others, 2017 (2) JCLR 36 (SC)** (Paras-5, 9 and 20).

Discussion and Findings:-

7. I have carefully considered the submissions of learned counsels for the

parties.

8. In this petition, this Court is concerned only with the validity of the impugned order dated 03.08.2017 in Civil Appeal No.45 of 2015 (Prahlad and others vs. Chandrabhan and others) passed by the Additional District Judge, Court No.2, Gyanpur whereby the Application 40-C dated 24.08.2016 filed by the petitioners-defendants before the Appellate Court was rejected. The Application 40-C filed as Annexure-3 to the petition is reproduced below:-

"न्यायलय श्रीमान अपर द्वितीय जिला जज महोदय ज्ञानपुरण जिला भदोही

न0 मु0 45 अपील दीवानी सन 2015 ई0

प्रहलाद आदि ———— बनाम ———— चन्द्रभान आदि

प्रार्थना पत्र मिनजानिब प्रहलाद अपीलांट प्रतिवादी मार्फत श्री आदित्य प्रसाद पाण्डेय एडवोकेट

दफा–1

यह कि मूलवाद की विवादित आराजी सं0 446 एवं दीगर अविवादित आराजी नम्बर 443 वाका मौजा खम्हरिया सं0 1 के सम्बन्ध में पक्षों के पूर्वाधिकारियों रनजीत, माता प्रसाद, अर्जुन व सरजू के मध्य बाहमी समझौता बटवारा होकर उक्त आराजियात पर पृथक पृथक रूप से उस पर उक्तांकित रनजीत आदि का स्वामित्व व अध्यासन हुए वादहूँ उसके सम्बन्ध में उक्त रनजीत आदि के मध्य उक्त बाहमी समझौता वटवारा का लिखित ज्ञाप दिनांक 31.12.1969 ई0 को लेखक अमरनाथ मौर्य द्वारा तहीर किया गया जिस पर उक्तांकित रनजीत आदि व लेखक तथा गवाहान का हस्ताक्षर हुआ और जो वाकायदा बाजाप्ता निष्पादित हुआ।

दफा–2

यह कि वादी ने वाद पत्र में उक्त लिखित बाहमी समझौता बटवारा के ज्ञान को जानबूझकर छिपाया और झूठा दावा किया जबकि अपीलान्ट प्रतिवादी ने वादोत्तर में उक्त बाहमी समझौता ज्ञाप का उल्लेख किया है जिस पर प्रतिवादी का लिखित कथन आधारित है जिसे वादी जबाबुलजबाब प्रस्तुत करके गलत ढंग से जाली, फरजी कहा है।

दफा–3

यह कि उक्त बाहमी समझौता बटवारा के लिखित ज्ञाप पर उक्त चजरजीत आदि चारो भाईयो का हस्ताक्षर, निशानी अगूँठा है जो सही व शुद्ध है उसे गलत तौर पर वादी प्रत्यर्थी द्वारा जाली फर्जी कहकर उसके अस्तित्व को इनकार किया है।

दफा–4

यह कि उक्त बाहमी समझौता बटवारा ज्ञाप को साबित करने का भार सबूत प्रतिवादी अपीलान्ट पर रहा किन्तु तत्कालिक अधिवक्ता की अनवधानता बस उक्त ज्ञाप पर किये गये रजीत आदि के हस्ताक्षर की सत्यता तुलना विशेषज्ञ द्वारा नहीं करायी गयी जबकि न्यायहित में उक्त ज्ञाप पर बने रंजीत आदि के हस्ताक्षर का मिलान उसकी सत्यता पुद्वता की परख हेतु उसके सम्बन्ध में विशेषज्ञ की राय लेना नितांत आवश्यक है।

अतः श्रीमान जी से प्रार्थना है कि उक्त बाहमी समझौता ज्ञाप दिनांक 31.12.1969 ई0 को लिवलेख जो अवर न्यायलय की पत्रावली में उपलब्ध है पर बने रंजीत आदि के हस्ताक्षर का मिलान किसी मान्य दस्तावेज के आधार पर एवं उसकी शुद्धता सत्यता की परख के सम्बन्ध में किसी सुयोग्य हस्तलेख निशान अगूँठा विशेषज्ञ द्वारा कराया जाकर तत्सम्बन्धित रिपार्ट आहूत किये जाने की आज्ञा आदि परमायी जावे ताकि न्याय हो।

दिनांक–24.8.2016 ह0 प्रहलाद

24.8.16"

9. Learned counsel for the petitioners-defendants has stated that the aforesaid Application 40-C was filed under Order XLI Rule 27 of the Code of Civil Procedure, which is reproduced below:

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

10. Perusal of Order XLI Rule 27 C.P.C. shows that it prohibits the parties to an appeal to adduce additional evidence either oral or documentary in the Appellate Court. However, it provides three exceptions in which the Appellate Court may allow such evidence or document to be produced or witness to be examined. These exceptions are provided in clauses (a), (aa) and (b) as quoted above.

11. Perusal of the Application 40-C filed by the petitioners-defendants shows that clauses (a) and (b) are not attracted as per averments made in the Application and admitted by learned counsel for the petitioners-defendants. The insistence of the learned counsel for the petitioners defendants is that the Application 40-C was liable to be allowed in view of the provisions of clause (aa). The question that arises for consideration is as to whether the petitioners-defendants could establish that notwithstanding the exercise of due diligence, such evidence was not within their knowledge or could not, after the exercise of due diligence, be produced by them at the time when the decree appealed against was passed. Contents of the

Application 40-C as quoted above clearly reveals that the only reason given in the said application for not producing/ obtaining a handwriting expert report was because of inadvertence of the then counsel. Clause (aa) of Order XLI Rule 27(1) and the Rules permits the Appellate Court to allow additional evidence or document to be produced or witness to be examined if the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within their knowledge or could not, after the exercise of due diligence, be produced by them at the time when the decree appealed against was passed. There is no averment in the Application 40-C indicating that notwithstanding the exercise of due diligence, the said evidence was not within their knowledge or could not, after the exercise of due diligence by them, be produced at the time when the decree appealed against was passed. Facts of the case as briefly noted above and the findings recorded in the impugned order leaves no manner of doubt that before the Trial Court, the petitioners-defendants were afforded sufficient opportunity to prove the alleged compromise dated 31.12.1969 although on their own application, the issue No.7 was specifically framed with respect to the alleged compromise dated 31.12.1969.

12. In the case **Malyalam Plantations Ltd. vs. State of Kerla, (2010) 13 SCC 487,** (Para-17), Hon'ble Supreme Court considered the scope of Order XLI Rule 27 C.P.C. and held as under:

> *"**It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.** Adducing additional evidence is in the interest of justice. Evidence relating to subsequent happening or events which are relevant for disposal of the appeal, however, **it is not open to any party, at the stage of appeal, to make fresh allegations and call upon the other side to admit or deny the same. Any such attempt is contrary to the requirements of Order 41 Rule 27 of CPC. Additional evidence cannot be permitted at the Appellate stage in order to enable other party to remove certain lacunae present in that case."***
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> *(Emphasis supplied by me)*

13. In the case of **Union Of India vs Ibrahim Uddin, (2010) 8 SCC 148,** (Paras-36 to 41), Hon'ble Supreme Court reiterated the principles of Order XLI Rule 27, C.P.C. laid down by it in its earlier decisions in the case of **K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay v. Lala Pancham & Ors., AIR 1965 SC 1008; Soonda Ram & Anr. v. Rameshwaralal & Anr., (1975) 3 SCC 698: AIR 1975 SC 479; Syed Abdul Khader v. Rami Reddy & Ors., (1979) 2 SCC 601 : AIR 1979 SC 553, Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798, State of U.P. v.**

Manbodhan Lal Srivastava, AIR 1957 SC 912; S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101 and held as under:

> *"36.* ***The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal.*** *However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances.* ***The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist.*** *The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself.*
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> *37.* ***The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment.***
> *38. Under Order XLI , Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment.* ***This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case.*** *It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence.*
> *39. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court.* ***Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.***
> ***40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule.*** *The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.*
> *41.* ***The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment."***
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> *(Emphasis supplied by me)*

14. The judmgent in the case of **Ajay Kumar Parmar** (supra) relied by learned counsel for the petitioners defendants has no application on the facts of the present case inasmuch as in para-25 of the said judgment, Hon'ble Supreme Court relied upon its decision in **Murari Lal vs. State of M.P., (1979) 3 SCC 612** and held that in case there is no expert opinion to assist the court in respect of handwriting available, the Court should seek guidance from some authoritative text-book and the court's own experience and knowledge, however, even in the

absence of the same, it should discharge its duty with or without expert, with or without any other evidence. Facts of the present case shows that before the Appellate Court, the petitioners defendants have moved Application 40-C on the ground of inadvertence of his counsel. Therefore, the Appellate Court has not committed any error of law in rejecting the Application 40-C.

15. The judgment in the case of **Rafiq and another** (supra) also has no application on the facts of the present case inasmuch as in the present set of facts, the petitioners defendants have not only got the issue framed by their two successive amendment applications with respect to the allege compromise dated 31.12.1969 but also filed evidences. The plaintiffs also led their evidences and on appreciation of evidences, the Trial Court recorded its finding. The alleged compromise/ agreement dated 31.12.1969 could not be proved by the petitioners-defendants who hotly contested the O.S. No.300 of 1999 before the Trial Court for more than 16 years. Since before this Court, merely the impugned order dated 03.08.2017 rejecting the Application 40-C is under challenge and as such this Court feels not to make any observation on merit with respect to the alleged compromise dated 31.12.1969.

16. In the case of **Shri Kishore and another** (supra), this Court relied upon a judgment of Hon'ble Supreme Court in the case of **Natha Singh v. The Financial Commissioner AIR 1976 SC 1053** and held that it is only in exceptional and extraordinary circumstances that the appellate court may, on its own, direct production of any document or witness only to enable it to pronounce the judgment or for any other substantial cause. No substantial cause has been indicated before this Court. The true test in such a case would be as to whether the appellate court is able to pronounce the judgment on the materials before it, without taking into consideration the additional evidence sought to be adduced. The parties cannot be given opportunity to better the case or adduce additional evidence only to fill up gaps left out in the case before the trial court , or else this would be a never ending process, and the parties would continue to move applications for adducing additional evidence at every stage of the proceedings.

17. In the case of **Shiv Karan and others** (supra), Lucknow Bench of this Court considered rejection of application of a case where the suit was filed in the year 1997 and the appeal against the order of the Trial Court was filed in the year 2009 and, thereafter, an application was filed to receive additional evidence seeking examination of marginal witnesses, this Court upheld the rejection of the

application by the Appellate Court on the ground that the application so moved was not justified as giving an opportunity at that stage could mean to allow for filling up lacunae.

18. In the case of **Satish Kumar Gupta etc.** (supra), Hon'ble Supreme Court held that it is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to be necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case. There was no ground for remand in these circumstances.

19. In the case of **Smt. Ganga Devi and another** (supra), similar principles were reiterated.

20. Coming to the facts of the present case, I find on perusal of the impugned order and the Application 40-C that the Court below has not committed any error of law in rejecting the application.

21. There is complete lack of causes provided in Order XLI Rule 27 C.P.C. under which additional evidence may be allowed to be produced by the Appellate Court. The petitioners-defendants have even not made any allegation in their Application 40-C that notwithstanding the exercise of due diligence, the handwriting expert report could not be obtained by them or could not be produced after the exercise of due diligence by them at the time when the decree appealed against was passed. The only cause shown by them in the Application 40-C is inadvertence of the counsel. In the case of **Ibrahim Uddin** (supra) (vide Para-20), Hon'ble Supreme Court held that the inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document, does not constitute a "substantial cause" within the meaning of Order XLI Rule 27 C.P.C. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal. It is true that if the 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 examined. The words "for any other substantial cause" must be read with the word "requires" in the beginning of clause (b) of Order XLI Rule 27. If so read, it would reveal that for

any other substantial cause, the Appellate Court requires additional evidence, when evidence has been taken by the lower Court.

CONSCLUSIONS:-

22. In view of the above discussion, I find that the general principle is that the Appellate Court should not travel outside the record of the lower court and generaly cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the Court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. Under Order XLI , Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. The inadvertence of the party or his inability to understand the legal issues involved or

the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document, do not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

23. In view of the above discussion, I do not find any infirmity in the impugned order. The petition is wholly devoid of merit and deserves to be dismissed with cost.

24. In result, the petition fails and is hereby **dismissed**.

25. Before parting with this judgment, it would be relevant to note that the judgment in this case was reserved on 22.08.2017. An Application under Section 151 C.P.C. No.280886 of 2017 dated 29.08.2017 has been moved by the petitioners-defendants on 30.08.2017 which came up before this Court on 01.09.2017. With the said Application, the petitioners-defendants have filed a certified copy of the judgment dated 26.08.2017 in Civil Appeal No.45 of 2015 (Prahlad and others vs. Chandrabhan and others) passed by the Additional District Judge, Court No.2, Bhadohi Gyanpur whereby their appeal itself has been decided. The aforesaid judgment of the Appellate Court may be challenged by the petitioners-defendants in appropriate proceedings. Under the circumstances, liberty is granted to the petitioners-defendants to challenge the judgment of the Appellate Court dated 26.08.2017 in appropriate proceedings, if so advised. The certified copy of the aforesaid judgment dated 26.08.2017 filed along with the Application, shall be returned by the office to the learned counsel for the applicants/ petitioners-defendants within three days after retaining a photostat copy thereof in the records. **Application No.280886 of 2017 is disposed off**.

Order Date :- 07.09.2017
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