NEUTRAL CITATION
2024:GUJHC:60783

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13911 of 2024

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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JAVEDBHAI @ JAVEDKHAN BABUBHAI SAIYAD & ORS.
Versus
SIKANDARALI KASAMALI KURESHI & ANR.

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Appearance:
MR AB MUNSHI(1238) for the Petitioner(s) No. 1,2,3
MR SATYAM CHHAYA with MR PARV C MEHTA(10800) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 28/10/2024

CAV JUDGMENT

1. With the consent of parties, the present matter is taken up for final disposal.

2. By way of present petition under Article 227 of the Constitution of India as well as under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC” for short), the

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petitioners have prayed for quashing and setting aside the order dated 28.08.2024 passed application, Exh.18 by the learned 4th Additional District Judge, Ahmedabad (Rural) in Regular Civil Appeal No.1 of 2022, whereby the application preferred by the petitioners under Order XLI, Rule 27 of the CPC seeking permission to produce additional documents came to be rejected.

3. The facts of the case in nutshell are as under,

3.1 The petitioners are the original defendant nos.1 to 3, whereas the respondent no.1 is the original plaintiff and the respondent no.2 is the original defendant no.4.

3.2 The respondent no.1 had filed Special Civil Suit No.240/2008 before the court of the learned Principal Civil Judge, Ahmedabad (Rural) against the petitioners and the respondent no.2 herein inter alia praying for direction upon the petitioners – original defendants to hand over vacant and peaceful possession of Plot No.1 admeasuring 61 Sq. Yards. (535 Sq.Mtrs.) in The Khurshid Co.Op.Ho.Soc.Ltd., situated on the land bearing Survey No.728 of moje Vejalpur, Taluka : City, District : Ahmedabad (hereinafter referred to as "property in question" for short) and also prayed for cancellation of the sale deed dated 29.12.2006 executed in favour of Nafisha Javed Saiyed as well as sale deed dated

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09.04.2008 executed in favour of Asarafjaha Habibbhai declaring it to be null and void ab initio and also sought permanent injunction.

3.3 On filing of the suit, notice came to be issued upon the original defendants and in pursuance to the issuance of notice, the original defendants have appeared through their advocate and also filed their reply and written statement and, thereafter, the suit proceeded further and both the parties have led their oral as well as documentary evidence.

3.4 Thereafter on the strength of the oral as well as documentary evidence led by the parties and after having considered the submissions canvassed by learned advocates for the parties, the learned 2nd Additional Senior Civil Judge, Ahmedabad (Rural), Ahmedabad, by judgment and order dated 02.12.2021, was pleased to allow the suit and thereby directed the original defendants to handover the possession of the property in question within a period of 60 days and also cancelled the sale deed dated 29.12.2006 executed in favour of Nafisha Javed Saiyed as well as sale deed dated 09.04.2008 executed in favour of Asarafjaha Habibbhai declaring it to be null and void *ab initio* and restrained the defendants and/or their agent, servants etc. from interfering with the

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property in question.

3.5 Being aggrieved by the aforesaid judgment and order, the petitioners have approached the learned District Court, Ahmedabad (Rural) by filing Regular Civil Appeal No.1 of 2022, wherein notice came to be issued and in pursuance thereto, the respondent no.1 appeared through advocate.

3.6 However pending aforesaid appeal, the petitioners have submitted an application, Exh.18 under Order XLI, Rule 27 of the CPC seeking permission to produce addition documents at Exh.19 i.e. (1) Resolution dated 15.06.1977 passed by the Board of Directors of Bimal Investment Pvt. Ltd at Exh.19/1; and (2) copy of the order dated 30.04.2022 passed by the City Deputy Collector, Ahmedabad (West) in Case No.4/2021 at Exh.19/2.

3.7 After considering the facts of the case and the submissions canvassed by learned advocates for the parties, the learned 4th Additional District Judge, Ahmedabad (Rural), by impugned order dated 28.08.2024, was pleased to partly allow the application, Exh.18, whereby the said application came to be allowed for the document at Mark-19/2, whereas rejected the said application for the document at Mark-19/1 and thereby the document at Mark-19/1 is ordered to be taken on record and exhibited, which led to filing

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of the present petition.

4. Heard learned advocate, Mr. A.B. Munshi for the petitioners and learned advocate, Mr. Satyam Chhaya assisted by learned advocate, Mr. Parv Mehta for the respondent no.1.

5. Learned advocate, Mr. Munshi for the petitioners submitted that the respondent no.1 had filed suit against the petitioners herein before the learned civil court, Ahmedabad inter alia praying for cancellation of the sale deeds as also for direction for handing over the possession of the property in question, which was decreed in favour of the respondent no.1, against which, Regular Civil Appeal No.1/2022 has been preferred before the learned District Court, Ahmedabad (Rural) challenging the said judgment and decree and pending said appeal, an application, Exh.18 was preferred under Order XLI, Rule 27 of the CPC seeking permission to produce addition documents on record, however without properly considering the facts of the case, the learned Judge has partly allowed, whereby one document is permitted to be placed on record, whereas permission qua other document has been rejected and the said order is assailed in the present petition. Learned advocate submitted that while passing impugned order, the learned Judge has observed that the defendants have miserably failed to prove that the executor of the registered sale deed had got power to execute deed by way of power assigned by the

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board members of the Company and the defendants have miserably failed to lead evidence to the effect that power to execute deed had passed by the Company through authority letter (resolution) in favour of the respondent no.2 and in absence of any resolution and lawful authority, the documents executed by the respondent no.2 in favour of the petitioners could not be said to be proved and ultimately, the learned Judge has come to a conclusion that the respondent no.1, who is original plaintiff, has successfully proved its case. Learned advocate submitted that in fact, the said issue, which was decided by the learned Judge, has never come on surface during the proceeding of the suit and not only that, any issue in that regard has also not been framed by the learned civil court at the time of determination of the issues, therefore, it was not well within the knowledge of the petitioners that it ought to have been produced the same and in fact, the said document is executed in the year 1997 and copy of said resolution was well within the custody of the petitioners at the relevant point of time, in that event, it could have been easily produced during the court proceedings but the said issue has not been at all arisen, therefore, it was not produced. Learned advocate submitted that the said fact has come on surface after going through the contents of the judgment, wherein the learned civil judge has given due

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weightage to the said issue by giving specific finding about non-production of the authority letter (resolution) of the Company. Learned advocate submitted that therefore in the appeal proceeding, the application was preferred with specific request to permit him to bring on record the said set of documents by filing an application, Exh.18. Learned advocate submitted that the said resolution was at all not never in dispute between the parties and there was no need arise to bring the said document on record, therefore, the learned civil judge ought not to have given any findings about non-availability and/or production of the said document on record.

6. Learned advocate submitted that at the time of decreeing the suit, the learned civil judge has come with a specific conclusion that the property in question is situated within the territory of disturbed area, therefore before execution of the registered sale deed, permission from the competent authority is required to be obtained but the defendants have failed to produce certificate in that regard and in absence of same, the registered sale deed cannot be executed. Learned advocate submitted that in fact, the proceedings have been launched before the competent authority for the purpose of getting certificate of no disturbed area and recently in the year 2022, the competent authority had allowed the said application in favour of the petitioners,

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therefore by no stretch of imagination, it can be said that the said document was not lying with the petitioners and issue was pending before the competent authority at large for adjudication, therefore despite their best efforts, the petitioners could not be able to produce the said documents and as soon as the order is passed, immediately an application is preferred.

7. Learned advocate has put reliance upon the decision of this Hon'ble Court in case of **Mukulbhai Rajendra Thakor Vs. Upendrabhai Anupam Joshi**, reported in **2018 (3) GCD 2230** and submitted that the Hon'ble Court has opined that the document produced along with an application under Order XLI, Rule 27 of the CPC for additional evidence in appeal proceedings, the same was required to be considered at the time of deciding the appeal and the said document ought to have been decided in accordance with law at the time of final stage of hearing of appeal. Learned advocate submitted that even temporary exhibit number could not have been given to the said document and opportunity be given to the petitioners to prove the contents of the said documents by leading appropriate evidence. Learned advocate, therefore, urged that considering the above facts, this petition may be allowed and direct the learned Appellate Court to take on record the document at Mark-19/1.

8. On the other hand, learned advocate, Mr. Satyam

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Chhaya appears for the respondent no.1 has opposed the present petition with a vehemence and submitted that the impugned judgment and order passed by the learned Appellate Court is just, fair, reasonable and based upon sound principle of law, therefore, does not require any interference at the hands of this Hon'ble Court. He submitted that in fact, for the purpose of understanding the dispute involved in the present petition, certain sequence of events are required to be seen. He submitted that in fact, before leading the evidence, specific averments had already made in the memo of plaint as well as in the evidence of the plaintiff. He submitted that not only that, the executor of the agreement to sale and the sale deed i.e. the respondent no.2 herein had entered into witness box and very pertinent questions were being asked to her in the cross-examination and even in her chief-examination, she has narrated the said fact, therefore by no stretch of imagination, it can be said that the said issue was not raised at the time of conducting trial of the suit as also at the time of deciding the suit. He has read the depositions as well as cross-examination of the witnesses and submitted that these facts were already there in the evidence, therefore, at such belated stage, it cannot be said that the said set of documents were at all not there on record. He further submitted that without stretching the issue involved in the

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matter, he would like to draw the attention of this Hon'ble Court towards certain relevant dates, which are very important in the present case that the suit was decreed on 02.12.2021 and appeal was preferred in the month of January, 2022 and at the time of preferring the appeal, the petitioners could have produced those documents as at that relevant point of time, he was aware about the findings and observation of the Hon'ble Court, which they have sought to produce by filing an application for additional documents but they remained silent for longer period of time without any justifiable cause and, thereafter in the month of December, 2022, the parties have submitted written submissions but due to Covid_2019, the hearing of the appeal could not be proceeded further but in the month of December, 2023, the application, Exh.18 seeking permission to produce additional documents had been preferred by the petitioners with a sole intent to fill up the lacuna and delay the proceedings. He read the provision of the Order XLI, Rule 27 of the CPC and submitted that it is the settled proposition of law that the documents, which were not well within the knowledge of the parties concerned and/or were not available in the custody of the parties at the time of leading evidence subsequently and after the pronouncement of the judgment and decree, discovery of new document has come on surface, which affects the core issue involved in the

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matter, in that event, the application of additional evidence is to be preferred and it can be entertained by the Hon'ble Court sympathetically but when application is preferred with an intent to fill up the lacuna, in that event, the said application can certainly be not entertained. He submitted that the present application is preferred to fill up the lacuna and specific tactic to delay the proceeding of appeal is adopted, therefore, the said application is not required to be entertained.

9. Learned advocate submitted that in fact, by way of filing such application, the petitioners would like to produce on record two documents and the said application was properly considered by the learned Judge and jumped to a conclusion that two documents upon which reliance has been placed, out of them, one document had seen the light of the day and come on surface in the year 2022 as recently the authority has decided the said issue in the year 2022, whereas the suit was already decreed in the year 2021, therefore despite best efforts being made by the petitioners, they could not be able to produce the said document as the document was at all not in existence at the relevant point of time. Learned advocate submitted that in fact, at the time of recording evidence of the witness examined on behalf of the original defendant, a pertinent question was being made with regard to the same document and not only

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that, in the cross-examination also, the said fact is clearly mentioned, therefore, it can be said that the petitioners were aware about the said fact but despite knowing it, they have not produced the said document at the relevant point of time and on the contrary, they have waited for longer period of time, which clearly goes on to show that dilatory tactic has been adopted by them, therefore, the learned Judge has entertained the application to that effect and partly allowed the said application by taking on record a copy of certificate, therefore, it cannot be said that the judgment and order passed by the learned Appellate Court is unjust, illegal and against the settled proposition of law. It is, therefore, urged that the present petition may be rejected.

10. I have heard learned advocates for the parties and also considered the documents available on record. I have perused the impugned application and the order passed thereon.

11. Having considered the submissions and the facts of the case, it is found out that in the year 2008, Special Civil Suit No.240/2008 came to be filed by the respondent no.1 before the court of the learned Principal Civil Judge, Ahmedabad (Rural) against the petitioners and the respondent no.2 herein inter alia praying for direction upon the petitioners – original defendants to hand over vacant and peaceful possession of the property in question and also for cancellation of the sale

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deed dated 29.12.2006 executed in favour of the petitioner no.2 as well as sale deed dated 09.04.2008 executed in favour of petitioner no.3 it to be null and void ab initio and also sought permanent injunction and the said suit was decree in the year 2021 in favour of the respondent no.1, against which, Regular Civil Appeal No.1/2022 came to be filed by the petitioners before the learned District Court, Ahmedabad (Rural), however in the meantime, the petitioners came to know about the observations made by the learned civil judge while passing order in plaint with regard to the documents, which are sought to be produced on record and upon coming to know about the same, an application has been preferred under Order XVI, Rule 27 of the CPC and sought permission to produce on record said set of documents, however, the said application was partly allowed by the learned Appellate Court allowing one document to take on record i.e. copy of the order dated 30.04.2022 passed by the City Deputy Collector, Ahmedabad (West) in Case No.4/2021 at Exh.19/2 and refused to take on record copy of Resolution dated 15.06.1977 passed by the Board of Directors of Bimal Investment Pvt. Ltd at Exh.19/1, which led to filing of the present petition challenging the said order.

12. At this stage, I would like to reproduce the provisions of Order XLI Rule 27 of the CPC, which reads as under :

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"**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) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

13. A bare perusal of the aforesaid provision, it is found out that in appeal proceeding before the Appellate Court, the parties to an appeal is not entitled to produce an application of additional

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evidence as a matter of right to lead evidence but in case, when the learned civil court, whose decree is challenged in the appeal, has refused to admit evidence which ought to have been admitted or the party seeking to produce additional evidence, establishes that despite due diligence, such evidence could be produced by him or her at the time when the decree was passed against him or her, such set of documents can be taken on record subject to recording of the reasons by the learned Appellate Court.

14. Thus, Order XLI rule 27 of the Code says that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court without assigning any justifiable cause to show cause that despite due diligence shown to produce the same due to unavoidable circumstances, it could not be produced. However, certain exceptions are carved out therein, whereby it is provided that 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

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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. Now if we look at the findings given and conclusion arrived at by the learned Judge while passing impugned order, it is found out that the learned Judge has observed in a very categorical terms that at the time of deciding the plaint, the document at Mark-19/1 i.e. Resolution dated 15.06.1977 passed by the Board of Directors of Bimal Investment Pvt. Ltd. was in possession of the petitioners and it was well within their knowledge but despite said fact, they did not produce the said document. It is also observed that even if for the sake of arguments, it is believed that the defendant/ appellants failed to produce this document due to bonafide mistake or misconception then also they could have come up with this additional evidence along with the appeal or soon thereafter but they did not do so even. Thus while passing impugned order, entire facts of the case have been considered by the learned Judge, therefore, it cannot be said that the learned Judge has committed any error while passing impugned order. Over and above that, in fact, while examining and cross-examining the witnesses, the said fact aspect had come within the knowledge of the appellants but despite that, they have chosen not to produce on record such

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documents and, thereafter in the appeal proceeding, an application has been preferred.

15. At this stage, it would be fruitful to refer to the decision of the Hon'ble Apex Court in the case of **Union of India Vs. Ibrahim Uddin**, reported in **(2012) 8 SCC 148**, more particularly Paragraph Nos.36 to 41 thereof, which read 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. (Vide: K. Venkataramiah V/s. A. Seetharama Reddy & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay V/s. Lala Pancham & Ors., AIR 1965 SC 1008; Soonda Ram & Anr. V/s. Rameshwaralal & Anr., AIR 1975 SC

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479; and Syed Abdul Khader V/s. Rami Reddy & Ors., AIR 1979 SC 553).

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. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. V/s. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

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.

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[Vide: Lala Pancham & Ors. (supra)].

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. (Vide: State of U.P. V/s. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal V/s. C.M. Armugam & Ors., AIR 1969 SC 101).

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

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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."

16. Further, it would also be fruitful to refer to the decision of the Hon'ble Apex Court in the case of **Sanjay Kumar Singh Vs. State of Jharkhand,** reported **(2022) 7 SCC 247,** more particularly Paragraph Nos.7 to 9 thereof, which reads as under:

"7. It is true that 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 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the

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circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, 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.

8. As observed and held by this Court in the case of A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713, 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. It is further observed that 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.

9. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that while considering the application for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration, i.e., whether the additional evidence sought to be adduced would have a

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direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed 29.12.1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court."

17. The above observations of the Hon'ble Apex Court merely indicates that 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, which is stated in the provision. However, as an exception, Order XLI, Rule 27 of the CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence

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sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.

18. At this stage, it would also be fruitful to refer to the decision of judgment of the Division Bench of this Court in the case of **Executive Engineer, Gujarat Electricity Board, Now Gujarat State Electricity Corporation Limited Vs. Legal Heirs of Koyabhai Budhabhai Parmar**, reported in **2018 (0) AIJEL-HC 239917**, more particularly Paragraph Nos.15 to 19 thereof, reads as under :

> "15 Thus, Order XLI rule 27 of the Code says that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. However, certain exceptions are carved out therein, whereby it is provided that 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

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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.

16. Insofar as the first eventuality is concerned, it is not the case of the appellant that the court from whose decree the appeal is preferred has refused to admit evidence which is sought to be brought on record. Insofar as the second eventuality is concerned, viz., despite exercise of due diligence, the evidence which is sought to be brought on record was not within the knowledge of the appellant and/or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, the only averment made in the memorandum of application is that the applicant could not procure the said documents despite exercising due diligence and the said evidence was not within the knowledge of the applicant. Thus, the onus cast under clause (aa) of sub-rule (1) of rule 27 of Order XLI of the Code for establishing that despite exercise of due diligence, such evidence was not within the knowledge of the appellant or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, has not been discharged. A bald assertion that the

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applicant could not procure such evidence without pointing out as to what steps the applicant had taken for the purpose of procuring such documents, would not establish that despite exercising due diligence, additional evidence could not be produced on record. Under the circumstances, the present case would also not fall within the ambit of clause (aa) of subrule (1) of rule 27 of the Code.

17. Insofar as clause (b) of sub-rule (1) of rule 27 of the Code is concerned, the said clause says that if 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. In the facts of the present case, it is not this court which requires any documents to be produced or any witness to be examined to enable it to pronounce the judgment. This court is of the considered view that on the evidence which has been adduced on record, it is in a position to pronounce the judgment.

18. The learned advocate for the appellant has placed reliance upon the expression "or for any other substantial cause", to submit that the present case would fall within the ambit of such expression and therefore, the application for additional evidence deserves

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to be allowed. In this regard it may be noted that before the reference court, the appellant who is the acquiring body, has not adduced any documentary evidence in support of its case. Moreover, the Special Land Acquisition Officer has also not stepped into the witness box. Therefore, no evidence worth the name has been adduced by the acquiring body or the Special Land Acquisition Officer for the purpose of assisting the reference court to determine the market value of the lands in question. Insofar as the expression "or for any other substantial cause" is concerned, the Supreme Court in Union of India v. Ibrahim Uddin (supra) has 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 this rule. The mere fact that certain evidence is important is not in itself a sufficient ground for admitting that evidence in appeal. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the 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

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imperfectly that the appellate court cannot pass a satisfactory judgment. The court has also held that 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. It was held that 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.

19. In the opinion of this court, the above decision would be squarely applicable to the facts of the present case and the appellant who is guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under rule 27 of Order XLI of the Code, inasmuch as, it had ample opportunity to produce the documentary evidence which is sought to be brought on record by way of additional evidence before the reference court, but failed to do so."

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19. Considering the law enunciated in the aforesaid decisions, I am of the considered opinion that the ingredients of Order XLI Rule 27 of the CPC, as indicated in the above mentioned decision, have not been satisfied by the petitioners in the application impugned filed before the learned Appellate Court. On the contrary, there is no proper assertion made by the petitioners in the application, on the basis of which, the Appellate Court can jump to a conclusion that such documents are necessary for proper adjudication and for pronouncement of the judgment.

20. I have also gone through the decision in case of **Mukulbhai Rajendra Thakor (supra)** relied upon by the learned advocate for the petitioners. There cannot be any dispute with regard to the ratio laid down in the same. However, in the facts and circumstances of the case on hand and this being discretionary relief, which requires to be granted judiciously, the said decision would be of no help to the present applicant at this juncture.

21. Therefore in view of the aforesaid observations, no infirmity can be found in the order passed by the learned Appellate Court, therefore, no interference is required. Accordingly, the present petition devoid of merits and is hereby rejected.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam