

CASE NO.:
Appeal (civil) 2349 of 2008

PETITIONER:
Ramesh Chand and Anr

RESPONDENT:
Ghaziabad Development Authority and Ors

DATE OF JUDGMENT: 31/03/2008

BENCH:
TARUN CHATTERJEE & HARJIT SINGH BEDI

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO 2349 OF 2008
(Arising out of SLP (C) No.8287 of 2006)

1. Leave granted.
2. This appeal is filed against the final order dated 8th of February, 2006 passed by the High Court of Judicature at Allahabad in second Appeal No. 443 of 2005 by which the High Court had dismissed the second appeal on the ground that reappraisal of evidence was not permitted in deciding the second appeal which was filed at the instance of the appellants.
3. In our view, this appeal can be disposed of on a very short question. It is an admitted position that during the pendency of the second appeal, an application for acceptance of additional evidence under Order 41, Rule 27 of the Code of Civil Procedure was filed at the instance of the appellants, which, however, was not decided at the time of disposal of the second appeal. In our view, this procedure adopted by the High Court not to dispose of the application under Order 41 Rule 27 of the Code at the time of disposal of the second appeal was not proper. The High Court was required to deal with the application under Order 41 Rule 27 of the Code at the time of disposal of the second appeal. Since the application under Order 41 Rule 27 of the Code was not decided at the time of disposal of the second appeal, it will be difficult for us to agree with the judgment of the High Court passed in the second appeal. In this view of the matter and without going into the merits of the judgment of the High Court passed in the second appeal, we set aside the same and remit the case back to the High Court for decision of the second appeal afresh along with the application under Order 41 Rule 27 of the Code. We request the High Court to decide the second appeal along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code in accordance with law positively within two months from the date of supply of a copy of this order without granting any unnecessary adjournment to either of the parties.
4. Mr. Vijay Hansaria, learned senior counsel appearing for the respondents, however, submitted that the application under Order 41 Rule 27 of the Code could not be entertained by the High Court as the appellants had failed to satisfy the conditions laid down in Order 41 Rule 27 of the CPC for acceptance of additional evidence. Since the application under Order 41 Rule 27 of the Code was not at all entertained by the High Court, it would be inappropriate for us to deal with the said application at this stage before a decision is arrived at by the High Court in the second appeal.

5. For the foregoing reasons, the impugned judgment of the High Court is set aside and the appeal and the application under Order 41 Rule 27 of the Code are directed to be decided within the time indicated hereinabove. The appeal thus stands disposed of. There will be no order as to costs.

JUDIS