

SUPREME COURT OF INDIA

Eastern Equipment & Sales Ltd.

Vs.

ING. Yash Kumar Khanna

C.A.No.3178 of 2008

(Tarun Chatterjee and H.S.Bedi,JJ.)

30.04.2008

ORDER

1. Delay condoned.
2. Leave granted.
3. Rejoinder Affidavit filed by the appellant be taken on record.
4. This appeal is directed against an order passed by a learned Single Judge of the High court of Delhi at New Delhi in CM(M) No. 41 of 2007 by which an order dated 05.10.2006 passed by the Appellate Court rejecting the petition filed by the appellant in the pending appeal for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure was affirmed.
5. We have heard learned counsel for the parties and after considering the facts and circumstances of the present case, we are of the view that in order to decide the pending appeal in which the application under Order 41 Rule 27 of the Code of Civil Procedure was filed ought to have been taken by the appellate Court along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. In that view of the matter and without going into the merits as to whether the application under Order 41 Rule 27 of the Code of Civil Procedure was rightly rejected by the Appellate Court as well as by the High Court, we set aside the order of the High Court as well as of the appellate Court rejecting the application under Order 41 Rule 27 of the Code of Civil Procedure and we direct that the appellate Court shall decide the pending appeal along with the application under Order 41 Rule 27 of the Code of Civil Procedure on merits within a period of three months from the date of supply of a copy of this order to the appellate court. The appeal is allowed to the extent indicated above. There will be no order as to costs.
6. The view that we have expressed can be supported by a decision of this Court in the case of *Jaipur Development Authority vs. Kailashwati Devi*¹.

7. We make it clear that we have not gone into the merits of the application under Order 41 Rule 27 of the Code of Civil Procedure which is kept open to be decided by the appellate court while deciding the appeal.

¹1997 (7) SCC 297