

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 6634 of 2024**

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M/S MOTILAL PUNAMCHAND  
Versus  
SHIRISHBHAI KASTURCHAND SHAH & ANR.  
=====

Appearance:

MR RIDDHESH TRIVEDI(6581) for the Petitioner(s) No. 1

for the Respondent(s) No. 2

DHRUVIK K PATEL(7769) for the Respondent(s) No. 1  
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**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**

**Date : 18/06/2024**

**ORAL ORDER**

Heard learned advocate for the parties.

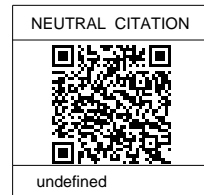
2. By way of this petition, the petitioner has prayed for the following reliefs:

*“A. YOUR LORDSHIP BE please to quash and set aside order dated 30 November 2023 passed by Appellant Bench of Small Cause Court at Ahmedabad below exh 44 in Regular Civil Appeal No. 59 of 2017, Annex "A"*

*B. During pendency and final disposal of the present petition, Your Lordship be pleased to stay the further proceedings of Regular Civil Appeal No. 59 of 2017, Annex "A"*

*C. To grant such other and further reliefs as may be deemed fit by this Hon'ble Court.”*

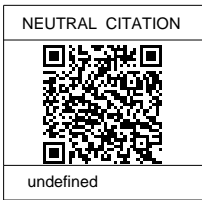
3. What appears from the record that respondents has filed HRP Suit No.1109 of 2005 before the learned Small Causes Court, Ahmedabad seeking peaceful and vacant possession of



the suit premises from the defendant. The suit was filed in the year 2005 and ultimately decreed in the year 2017. The appeal was preferred under the provisions of Presidency Small Cause Courts Act before the Division Bench of Small Causes Court, Ahmedabad in the year 2017 being Appeal No.59 of 2017. Almost after seven years, the appellant came out with an application at Exh.44 under O.41 R.27 of the Code of Civil Procedure to bring on record the photocopy of the partnership deed. The relief claimed to allow additional evidence was denied by the Division Bench of the appellate Court and hence this petition under Article 227 of the Constitution of India is filed with above prayers.

4. Learned Advocate Mr.Trivedi for the petitioner while relying upon the decision in case of *Sanjay Kumar Singh vs. State of Jharkhand [2022 (7) SCC 247]* more particularly paragraph 4 *thereof* would submit that learned appellate Court has decided the relevancy of the document; instead of deciding whether the document was required for pronouncement of the judgment or not and therefore jurisdictional error has been committed by the Court below. Therefore, he would submit to allow this petition.

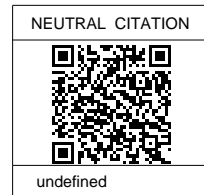
5. On the other hand, learned advocate for the respondent Mr.Patel while supporting impugned judgment and order would submit that defence of the partnership was never stated in the written statement by the appellant and the copy of the partnership deed was brought from out of blue, first time in the proceedings which commenced in the year 2005 and therefore learned court below has rightly rejected the application Exh.44 and therefore this Court may not interfere with the said finding



and to dismiss the petition.

6. Having heard the learned advocate for the respective parties, at the outset, let refer the nature of scope of the supervisory jurisdiction under Article 227 of the Constitution of India, which is enlightened in case of ***Garment Crafts Vs. Prakash Chand Goel reported in (2022) 4 SCC 181***, wherein the Hon'ble Apex Court in para 15 and 16, held as under:-

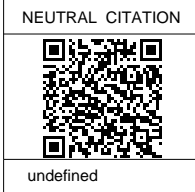
*“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal [Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 217]. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary*



*relief must be exercised to ensure there is no miscarriage of justice.*

*16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97 has observed:-*

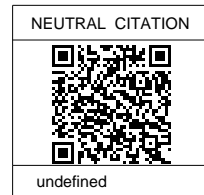
*“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to*



*justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”*

7. At the outset, it can be noted in a suit which was filed in the year 2005, the unsuccessful defendant came out with the application for producing additional documentary evidence in the year 2023 i.e. almost after 18 years, as unsuccessful defendant and the appellant discovered the document. On going through the application at Exh.44, no reasons are stated therein which could satisfy the conscience of the Court to admit such kind of the secondary evidence at the appellate stage. Learned appellate Court has given reasons for declining the application at Exh.44 and observed in paragraph 3 which reads thus:

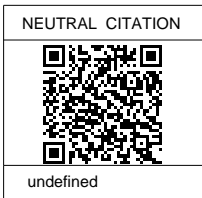
*“[3] Now, looking to the record of the case and more particularly, the R & P of the Id. trial Court, it appears that the appellant as a def. of the suit has not stated any thing about the present documents. Looking to the facts of the W/s of the suit, of the def./present appellant, it is stated that the Business of Narmada sales which has been manged and look after by one Premkumar Babulal has been closed. As such, now under what defence the appellant wants to to produced the said deed of partnership is not sufficiently explained by the appellant. At the time of trial of suit, to prove the facts of the partnership deed, the def. has also not examined the said person/partner. The def(s) has not stated any facts also for the same and more over, in the deposition as well as in the cross examination i.e. in Oral evidence also, the said documents or it's facts have not been stated or raised by the appellant in his defence. Hence, the said documents can not even in the perview of Additional Evidence*



*as provided in Order 41 R1.27.”*

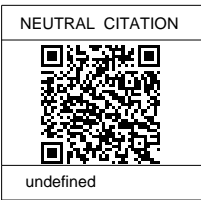
8. In background of the above aspect, let refer to the paragraph 4 of the decision in case of **Sanjay Kumar Singh (supra)** .

*“4. 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 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. 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. While explaining the scope and purport of O.41 R.27 of the CPC, the Hon'ble Apex Court has categorically stated that taking of additional evidence is an exceptional circumstances and the appellate Court may permit additional evidence if the conditions laid down in this Rule are found to exist, otherwise the parties are not entitled as of right to produce such evidence. If the Court feels that the particular document is necessary to pronounce the judgment, it is always open for the Court to take additional evidence; but otherwise, if the party intends to produce additional evidence at the appellate stage, is to satisfy the conditions laid down under O.41 R.27 are fulfilled. These conditions are that the trial Court has refused to admit the evidence which ought to have been admitted; the party seeking to produce additional evidence established that notwithstanding of 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 during the trial. In the present case, neither of the conditions are specified. There is no due diligence on the part of the appellant. Neither it is pleaded nor it is proved. It is not the case of the petitioner that trial Court has refused to admit the evidence which ought to have been admitted.



10. Under the circumstances, the petition is bereft of merits and does not call for any interference under the limited jurisdiction and therefore petition is dismissed. Needless to say that as the appeal is pending since year 2017, the appellate Court shall dispose of the same as early as possible.

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**(J. C. DOSHI,J)**