

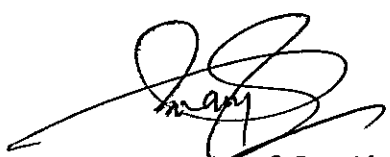
Case No. W.P.(C) 39 of 2011,

Serial No.	Date	Order (s) with Signature (s)
1	2	3
02.	11.08.11	<p style="text-align: center;">BEFORE HON'BLE MR. JUSTICE S.P. WANGDI, ACTING CHIEF JUSTICE</p> <p>Present: Mr. A. K. Upadhyaya, Sr. Advocate with Ms. Rashmita Rai, Mr. Thupden G. Bhutia, Ms. Mukul R. Parajuli and Ms. Dawa Jangmu Sherpa, Advocates for the petitioners.</p> <p>Mr. K.T. Bhutia, Sr. Advocate with Ms. Bandana Pradhan, Advocate for respondent No.1.</p> <p>Mr. J.B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay, Govt. Advocate and Mr. S.K. Chettri, Asstt. Govt. Advocate for respondents No.2 to 4.</p> <p style="text-align: center;">-----</p> <p>Heard Mr. A.K. Upadhyaya, learned Senior Counsel for the petitioners and Mr. K.T. Bhutia, learned Senior Counsel for respondent No.1. Also heard Mr. J.B. Pradhan, learned Additional Advocate General for the State respondents No.2 to 4.</p> <p>During the course of the arguments, Mr. K.T. Bhutia, learned Senior Counsel referred to Paragraph 4 of the case of State of Rajasthan vs. T.N. Sahani & Ors. (2001)10 SCC 619 and submitted that in view of the position of law laid down in that case, all that can be done in the present proceedings is that the learned Appellate Court can be directed to consider the application under Order XLI Rule 27 while disposing of the main appeal. Relevant part of Paragraph 4 of the case of State of Rajasthan vs. T.N. Sahani & Ors. (2001)10 SCC 619 is reproduced below:-</p>

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		<p>"4. It may be pointed out that this Court as long back as in 1963 in <i>K. Venkataramiah v. Seetharama Reddy</i> pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal."</p> <p>Mr. J.B. Pradhan, learned Additional Advocate General concurred with the submissions of Mr. K.T. Bhutia and submitted that this view has already been accepted by this Court in its decision in RFA No.7 of 2006 (<i>Sonam Gyatso Bhutia vs. The State of Sikkim & Ors.</i> where the same view had been taken.</p> <p>In view of the above, this petition stands disposed of with a direction upon the learned Appellate Court to consider the application under Order XLI Rule 27 of the C.P.C. filed by the petitioners denovo. While hearing the appeal, the learned Appellate Court shall take into consideration the relevance of the documents to the matter <i>in lis</i> in the suit. The parties are at liberty to place all their submissions in this regard before the learned Appellate Court with a direction that the</p>

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		<p>Appeal be heard and disposed of within thirty days from the date of this order and not later than that.</p> <p>In the result this petition is allowed and the impugned order stands set aside.</p> <p>No order as to cost.</p> <p> Acting Chief Justice 11-08-2011</p>