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## ADDITIONAL EVIDENCE AT THE APPELLATE STAGE: STATUTORY CONSTRAINTS AND JUDICIAL DISCIPLINE UNDER ORDER XLI RULE 27 CPC

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### ABSTRACT

Formal admission of further evidence at the appellate stage of an appeal falls under the discretionary authority of appellate courts as established by Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (CPC). The general principle governing appeals is that they are limited to the record of evidence created in the trial court and that parties to an appeal do not have an automatic right to present new oral or documentary evidence. However, Rule 27 provides a number of limited exceptions to this rule including when a trial court wrongfully failed to admit evidence; when the parties cannot produce evidence due to their own diligence; when the need for a party to obtain a ruling from the appellate court is greatest or any other substantial cause.

Judicial interpretation has consistently underscored that appellate courts should exercise the authority offered by Rule 27 with extreme caution to prevent the appellate process from turning into de novo trials. The Supreme Court of India has developed a series of decisions beginning with *K. Venkataramiah v. Sitaram Reddy (1963)*<sup>1</sup> and *Municipal Corporation of Greater Bombay v. Lala Pancham (1964)*<sup>2</sup> and culminating with the definitive decisions of *Union of India v. Ibrahim Uddin (2012)*<sup>3</sup> and *Sanjay Kumar Singh v. State of Jharkhand (2022)*<sup>4</sup>. Through this development, the Supreme Court has established that the "real test" doctrine, the due diligence requirement and the rebuttal safeguard are critical constraints on how appellate courts exercise their discretionary authority under Rule 27.

This piece of academic writing conducts a thorough investigation into *Order XLI Rule 27 of the Civil Procedure Code (CPC)*<sup>5</sup> through the lens of both Doctrine and Analysis. In addition to looking at how this rule is interpreted

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<sup>1</sup> AIR 1963 SC 1526

<sup>2</sup> AIR 1965 SC 1008

<sup>3</sup> AIR 2013 SC 427

<sup>4</sup> AIR 2022 SC 1372

<sup>5</sup> [https://www.indiacode.nic.in/bitstream/123456789/13813/1/the\\_code\\_of\\_civil\\_procedure%2C\\_1908.pdf](https://www.indiacode.nic.in/bitstream/123456789/13813/1/the_code_of_civil_procedure%2C_1908.pdf)

by law, the article identifies a wide range of relevant case law and evaluates the potential for misuse of procedural protections. Finally, the article will discuss what changes could be made to the rule in order to reduce the potential for misuse while maintaining the effectiveness of the appellate system.

**Keywords:** Order XLI Rule 27 CPC, additional evidence, appellate discretion, due diligence, substantial cause, lacuna test, and judicial restraint.

### **STATUTORY FRAMEWORK: ORDER XLI RULE 27 CPC**

Order XLI Rule 27(1) CPC not permits admission of additional evidence, it is allowed only in the following circumstances:

- **Clause (a):** Where the trial court has wrongly refused to admit evidence that ought to have been admitted.
- **Clause (aa):** Where the party seeking to adduce evidence establishes that, despite due diligence, such evidence was not within its knowledge or could not be produced at the time of trial.
- **Clause (b):** Where the appellate court itself requires such evidence to enable it to pronounce judgment or for any other substantial cause.

Rule 27(2) mandates that reasons for admitting additional evidence must be recorded in writing.

### **Nature of the discretion of the court**

The discretion granted to appellate courts per Order XLI Rule 27 CPC cannot be benevolent, but rather it has judicial restrictions. As stated definitively by Supreme Court in the case of *Municipal Corporation of Greater Bombay v Lala Pancham (1964)*<sup>6</sup>, the purpose for which additional evidence may be submitted is to fill a gap in the evidence required for the judge to reach an effective decision, and to not allow a party to make up for its failure to provide sufficient proof at trial. The Court reiterated that appellate procedures cannot transform into a new trial when exercising discretion.

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<sup>6</sup> 3 SCR 800

This principle was further established in *Natha Singh & Ors. v/s The Financial Commissioner, Taxation (1976)*<sup>7</sup> where the Supreme Court clearly ruled that the appellate court's ability to receive and accept additional evidence is not arbitrary but rather judicial and strictly defined by the limitations set forth in Order XLI Rule 27 CPC. The Court found that if additional evidence is accepted without following the guidelines of Rule 27, the acceptance of that evidence would constitute an improper exercise of discretion; therefore, any such evidence should be disregarded. This judgment emphasizes that an appellate court must follow the statutory requirements.

### **Circumstances in Which the Appellate Court May Admit Additional Evidence and the Scope of “Substantial Cause”**

Where a party has submitted an application pursuant to the provisions of Order 41 Rule 27 of the Code of Civil Procedure- (CPC)- requesting that additional documents or information be permitted to be presented before them on appeal, the appellate court shall have an obligation to assess the application. Further to this, the appellate court should also review the application on its merits and determine whether the additional evidence directly affects the matters under consideration and will impact the determination of the appeal. In other words, additional evidence may be deemed admissible by an appellate court only if the additional evidence is relevant to a particular issue and is necessary for the efficient resolution of the dispute.

Further to this, additional evidence which existed at the time of the filing of the appeal can also be submitted as additional evidence upon satisfying the statutory requirements set out in Order 41 Rule 27- (CPC). In exceptional cases, where both parties agree that the appellate court should allow the introduction of further evidence, such a collective agreement constitutes a reasonable "cause" as contemplated under Order 41- (CPC)- Rule 27(1)(b).

While it is certainly true that the fact that there is strong, credible or corroborative evidence to support a litigant's position is an important consideration when determining whether such evidence should be accepted on appeal, it alone does not justify the acceptance of that evidence at the appellate stage. Moreover, in relation to a party's application for permission to use additional evidence on appeal, the party seeking to use that evidence must demonstrate that they had the opportunity to submit that evidence to the trial court but chose not to submit that

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<sup>7</sup> 3 SCC 225

evidence because of the incorrect belief that the evidence that was submitted would be sufficient to support the party's position. In contrast, a litigant's claim that they were not aware of the existence or significance of a piece of documentary evidence at the time of trial, or that their attorney did not submit that piece of evidence when it should have been presented under Order XLI Rule 27 of the Civil Procedure Code, cannot justify the acceptance of additional documentary evidence after the conclusion of the trial. Furthermore, where an issue has been correctly defined and the parties have had a fair opportunity to submit evidence in relation to that issue, there is no valid basis for allowing the parties to submit additional documentary evidence on appellate review. Additionally, the appellate court must consider how the adjudication of an appeal may be affected by the inclusion of newly discovered evidence.

An Appellate Court must provide clear and convincing evidence of the existence of valid reasons for allowing the parties to produce Further Evidence pursuant to Order XLI, Rule 27(2) of the Code of Civil Procedure. In *Mahavir Singh and Others v. Naresh Chandra and Another (2001)*<sup>8</sup>, the Supreme Court stated that although Section 107 of the CPC allows an Appellate Court to allow Additional Evidence, any such decision must adhere to O. XL Rule 27 of the CPC and that the degree of discretion afforded to an Appellate Court to admit Additional Evidence is limited by these Rules. Thus, neither party shall have a right to adduce or submit Additional Evidence and the exercise of discretion by an Appellate Court shall be judicious, cautious and limited to the restrictions imposed by the Rules. The restrictive view of "substantial cause" was reinforced by the Supreme Court in *Malayalam Plantations Ltd. v. State of Kerala and Another (2010)*<sup>9</sup>, where the Supreme Court further stated that while Subsequent Events may, in some extraordinary circumstances, permit admission of Subsequent Evidence in the name of Justice, it does not allow for the inclusion of New Allegations or for the purpose of remedying deficiencies in the Evidence Adduced during the trial stage.

The Supreme Court conclusively held that at the appellate level, introducing new evidence to fix issues in the party's case was in direct violation of Order XLI Rule 27 of the CPC. The Supreme Court set aside the judgment that was appealed from and sent the case back to the appellate court and that the appellate court must determine if new evidence is admissible in

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<sup>8</sup> (2001) 1 SCC 309

<sup>9</sup> AIR 2011 SC 559

accordance with the laws and nothing else, meaning that the appellate court cannot allow for new evidence based on its views of who would win the case if the evidence was allowed

### **Circumstances Where the Power to Admit Additional Evidence Is Extinguished**

One of the main principles of the Court of Civil Procedure of 1908 when determining appeals using Order XLI Rule 27 is called the True Test. The True Test measures the capability of the Appellate Court to render a judgment based entirely upon the evidence already before the court, without the need or use of any additional evidence. If the Appellate Court determines that it is able to render a judgment regarding the appeal based solely on the existing evidence, then it is not permitted to consider additional evidence.

In *Natha Singh v. Financial Commissioner*<sup>10</sup>, the Supreme Court made it clear that the authority of the Appellate Court to decide whether or not to use additional evidence pursuant to Order XLI Rule 27 is not absolute, but rather judicially limited. Moreover, the Court stated that if the Appellate Court allows additional evidence to be placed before the Appellate Court in violation of the governing rules of Order XLI Rule 27, then the Appellate Court will not be allowed to consider that additional evidence. This ruling was made to emphasize the fact that, under the rules of Order XLI Rule 27, the Appellate Court must follow the statutory limitations imposed by those rules and such limitations may not be determined just because of procedures.

The appellate court may invoke its powers under Order XLI r.27(1)(b) based on the necessity of the evidence being produced for the decision of a material issue in the appeal. Judicial necessity will aid in the determination as to whether the evidence will be of assistance, rather than a party's diligence/negligence. In *Wadi v. Amilal*<sup>11</sup>, the Supreme Court noted that the only evidence to be considered was evidence on a basis of judicial necessity, and any conduct of the parties is irrelevant. However, the court has consistently also held that negligence, clerical error, lack of legal advice and/or failure to understand the evidentiary value of a document do not provide a "substantial reason" to permit the introduction of further evidence at the appellate stage, as clearly established in *Haryana State Industrial Development Corporation v M/s Cork Manufacturing Company*<sup>12</sup>. The supreme court has also held that a delay in seeking permission to adduce further evidence will constitute a valid basis for rejection. In *N.Kamalam v.*

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<sup>10</sup> AIR 1976 SC 1053

<sup>11</sup> AIR 1927 PC 68

<sup>12</sup> AIR 2008 SC 3212

*Ayyasamy*<sup>13</sup>, it was determined that the rejection of an application to adduce further evidence filed almost ten years after the institution of the appeal would not be considered arbitrary or unreasonable. In addition, *N. Kamalam v. Ayya Samy* provides further clarification that the purpose of Order XLI Rule 27 is not to allow parties to reopen the procedural timeline or to allow stale evidentiary claims.

### **Judicial Approach to the Admission of Additional Evidence in Appellate Courts**

The appellate level of appeal, nonetheless, still holds that the trial court has the highest distinct authority and of the greatest significance in trials. The Supreme Court in *A. Andisamy Chettiar v. A. Subburaj Chettiar*<sup>14</sup> determined that under the Civil Procedure Code, 1908, a party is expected to provide and submit their entire look of their evidence, both oral and documentary, in the trial. At the same time, the Court has clarified that, based on the provisions contained in Section 107(1)(d) of the CPC, in addition to the provisions contained in Order XLI Rule 27 of the CPC, the appellate court shall only admit additional evidence in extraordinary circumstances. To facilitate that, the Court held the following guiding principles:

In the first instance, the appellate court shall not allow additional evidence solely to compensate for a party's insufficiency of evidence at the trial level. Allowances of such kind are permissible only where the evidence is necessary for the court to properly administer the rules of justice between the two parties. Secondly, the general principle is that an appeal must be determined based on the records of the trial court; the appellate court shall only deviate from this requirement in accordance with Order XLI Rule 27 of the Code of Civil Procedure and only under strict confines of that Order.

In addition, the relevance of additional evidence is not sufficient for the appellate court to conclude that additional evidence can be allowed, nor is it sufficient that the parties could have produced the additional evidence at an earlier time. Instead, the appellate court will need to determine whether the introduction of the additional evidence is required in order for the appellate court to decide on the proper outcome of the case, and/or to reach a just outcome in any other significant manner. (*A. Andisamy Chettiar v. A. Subburaj Chettiar* (2015) 17 SCC 713) (India) The Supreme Court in *Sri Y.P. Sudhanva Reddy & Ors. v. Chairman and*

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<sup>13</sup> AIR 2001 SC 2802

<sup>14</sup> AIR 2016 SC 216

*Managing Director, Karnataka Milk Federation*<sup>15</sup>, held that a party may also be allowed to produce additional evidence, provided that the party can provide an acceptable and good faith reason for being unable to present the evidence previously, even if the party acted with reasonable care to obtain evidence, and if the evidence directly and materially relates to the resolution of the dispute. However, the Supreme Court cautioned that the allowance of the introduction of additional evidence must not be done in a mechanical manner and the appellate court must ensure that the introduction of additional evidence is subject to sufficient procedural safeguards to protect the fairness of the process for the opposing party.

### **Important rule under order 41 rule 27 of the CPC**

The central principle or control of admissibility of additional evidence at the appellate level, pursuant to the Code of Civil Procedure, 1908 - Order XLI Rule 27, is the "true test" doctrine. It was defined authoritatively by the Supreme Court of India in *Municipal Corporation of Greater Bombay v. Lala Pancham*<sup>16</sup>, wherein the Supreme Court stated that "the decisive question is not whether the evidence sought to be led at the appellate stage is relevant or material but whether the appellate court is in a position to deliver a judgment based solely on the evidence already in the record". The Supreme Court clearly articulated this principle, stating, "the true test is whether the appellate court can give judgment on the basis of the evidence available to it without taking into account any additional evidence to be adduced."

The importance of this principle is that it operates functionally. The appellate court does not allow additional evidence, inter alia, in order to increase the quality of adjudication or to achieve a greater/just result; the jurisdiction of the appellate court is only triggered when the addition of the additional evidence is necessary to allow the appellate court to adjudicate on the lis effectively. Even if the appellate court could adjudicate on the basis of the evidence available to it.

The so-called "true test" functions to indicate the likelihood of reversibility in a manner that is similar to but opposite from a positive entitlement. The mere fact that the additional evidence is material and relevant to strengthen a party's position does not meet the requirement established by the "true test." As discussed previously, evidence that is relevant is only one part of meeting the requirements of the "true test." The evidence must be essential to the

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<sup>15</sup> AIR 2018 SC 3444

<sup>16</sup> AIR 1965 SC 1008

adjudication process; without it, there would exist an evidentiary void, preventing the appellate court from determining whether a legally sustainable decision could be made based on all of the other evidence presented at the original trial. The “true test” serves as a check against the possibility of creating a second trial and providing an avenue for strategic repair or enhancement of the original evidentiary record. The Supreme Court has reiterated on multiple occasions that the “true test” is designed to protect the separate jurisdictional structure of trial and appellate courts; therefore, it maintains that the trial court is the primary venue for making factual determinations while the appellate court serves as a corrector and supervisor of the trial court's decisions. If additional evidence could be permitted based solely on its probative value, it could obliterate the distinction between the two types of court and significantly undermine the finality of procedural decisions. Thus, the “true test” limits the ability of an appellate court to accept additional evidence unless required to do so by judicial necessity.

The doctrine also places emphasis on the fact that Order 41 rule 27 is for the benefit of the court rather than for the benefit of each party. For example, the question before an appellate court is not whether the party wants to submit additional evidence but whether the appellate court requires that evidence to issue its decision. This shift in focus prevents parties from using rule 27 to remedy what would otherwise have been their own procedural errors and aligns the discretionary power of the court with the institutional and therefore adjudicatory needs rather than the parties' self-interests.

The essence of the “true test” doctrine is that it will preserve the narrow exception to allow for the introduction of additional evidence. The exception applies only in situations where a trial has created an evidentiary gap that obstructs the ability of an adjudicator to make an informed decision. While this is an exception to introduce more evidence, it is not an exception that will allow a party to attempt to create a “more complete” or “more fair” trial retroactively by introducing additional evidence to support their claim. Thus, limiting the exercise of discretion to instances where the introduction of additional evidence is an adjudicative necessity protects the integrity of the appellate process, reinforces procedural discipline, and upholds the finality of trial decisions.

## **CONCLUSION**

The legal rules regarding Order XLI Rule 27 of the Code of Civil Procedure (CPC) 1908 demonstrate a careful balancing of procedural finality with substantive justice. As the research

demonstrates, an appellate court has the power to admit new evidence, but this power is not used as a matter of course and is used judiciously to remedy exceptional cases where failing to allow the introduction of new evidence would prevent justice. It is clear from the statute, with consistent decisions interpretative by the courts, that an appeal is not a continuation of the trial proceedings, but instead will act only on the records of evidence before the court as they were presented in the trial.

Using case law in *K. Venkataramiah v. Sitaram Reddy*<sup>17</sup>, *Mumbai Municipal Corporation v. Lala*<sup>18</sup> *Panchamnd Union of India v. Ibrahim Uddin*<sup>19</sup>, the Supreme Court laid out the controlling principles for this discretionary authority with the "true test" doctrine, that new evidence can only be introduced if it is necessary to achieve justice, "due diligence" requirement, that a party must have made a reasonable effort to produce the new evidence during trial, and an explicit prohibition against filling in gaps in the evidence available to the trial court. All of these principles work together to limit the introduction of new evidence solely when the courts believe, for the sake of justice, the new evidence must be introduced to help achieve a fair judicial result, not simply because the evidence is favourable or persuasive to one of the parties.

The analysis also stresses that the court-centred premise of Order XLI Rule 27 is the focus of that Rule as opposed to being party centred. The key question under this Rule is not whether the parties to the appeal were negligent, inadvertent or tactical appraisers of the Record, but rather is the Court of Appeal equipped to make an appropriate determination of the evidence that is already in the Record? Each of the grounds outlined above has been consistently rejected as a basis for approving the use of this provision by the Courts of Appeal. The requirement under Rule 27(2) to provide reasons for a decision is an added safeguard against the arbitrary use of a Judge's discretion to grant or deny a party's request for the filing of evidence outside of the Record.

As such, Order XLI Rule 27 is an important but limited part of the appellate procedures. Its careful use maintains the sanctity of the trial and prevents the abuse of the Courts of Appeal while maintaining an environment of procedural discipline; however, its restricted nature allows it to be used in only truly exceptional circumstances when it is necessary for Justice to

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<sup>17</sup> AIR 1963 SC 1526

<sup>18</sup> AIR 1965 SC 1008

<sup>19</sup> AIR 2013 SC 427

intervene to protect the parties' rights. By providing for this measured approach, Order XLI Rule 27 provides confidence in the Appellate Courts that the flexibilities afforded to the Appellate Courts by Order XLI Rule 27 will not lead to uncertainties of law and indiscipline in procedural matters.