**APPLICATION UNDER ORDER 41, RULE 27, C. P. C.**

IN THE COURT OF....................

Suit No..................... of 19........................................

C. D................................................................... Plaintiff

*versus*

C. F................................................................ Defendant

The applicant most respectfully submits as under: —

1. That the applicant intends to file documents as mentioned below: (Set out documents required to be filed)

2. That an application had been made by the applicant on.................... (date) in the Court below for the production of the documents as mentioned above but the Court below refused to admit those documents in evidence.

3. That on account of the refusal by the Court below to admit the said documents in evidence as the applicant has not been able to substantiate his defence in the Court below and thus lost the case.

**PRAYER**

It is therefore most respectfully prayed that the documents referred to in para 1 above may be taken on record as an additional evidence and such order as this Court may think fit may be made in that respect.

It is prayed accordingly.

Applicant

Through Advocate

Place:....................

Dated:....................

**CASE LAW**

***Order 41, Rule 27***

**APPLICATION OF THE RULE—ADDITIONAL EVIDENCE—WHEN TO BE ADMITTED.**

The discretion to receive and admit additional evidence is not an arbitrary one, but is a judicial one circumscribed by the limitation specified in O. 41, Rule 27, Civil P. C. If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have

to he ignored and the case decided as it was non-existent. Under O. 41, Rule 27, it is the appellate court that must require the evidence to enable it to pronounce judgment. As laid down by the Privy Council in the well-known case1.

"The legitimate occasion for the application of the present rule is, when on examining the evidence, as it stands, some inherent lacuna or defect becomes apparent, not where a discovery is made, outside the court, of fresh evidence and application is made to import it. " And they reiterated this view in stronger terms even in the later case2. 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 adduced3.

**ADMISSION OF ADDITIONAL EVIDENCE—WHEN CAN BE REFUSED? (MANY YEARS AFTER FILING SUIT).**

Before the High Court, Pramod Kumari filed an application for reception of additional evidence. The principal additional evidence sought to be adduced was an alleged letter said to have been written by late Pearey Lal Singh to the bank nominating Pramod Kumari as the person entitled to the amount in deposit with the bank. The letter itself was not filed along with the application but a request was made to summon the letter from the bank. The High Court rejected the application. The application to the High Court was made very many years after the suit had been filed, and also quite some years after the appeal had been filed before the High Court, and we do not think that we will be justified in interfering with the discretion exercised by the High Court in refusing to receive additional evidence at that stage. The appeal is therefore dismissed but in the circumstances with no order as to costs4.

**POWER OF HIGH COURT UNDER SECTION 115 CPC**

***Order 41, Rule 27, Section 15***

The High Court in exercise of its power under Section 115, CPC, could not interfere with an order of appellate Court rejecting permission to adduce additional evidence particularly when the whole appeal is not before the High Court.5

**ADDITIONAL EVIDENCE**

***Order 41, Rule 27***

Section 107, CPC enables an appellate Court to take additional evidence or to require such other evidence to be taken subject to such conditions and limitations as are prescribed under Order XII, Rule 27, CPC.5

1. Kessowji v. G. I. P. Railway, 341-A. 115: 41 Bom. 381 (P. C. ).

2. Parsotam v. Lal Mohan, 58 I. A. 254: A. I. R. (18) 1931 (P. C. ) 143.

3. Arjan Singh v. Kartar Singh, A. I. R. 1951 S. C. 193: 1951 S. C. R. 2158: 1951 S. C. J. 274: 1951 A. L. J. (S. C. ) 78: 1951 A. W. R. (H. C. ) 417: 1951 (1) M. L. J. 556: 1951 M. W. N. 340.

4. Smt. Pramod Kumari Bhatia v. Omprakash Bhatia and others, 1980 (1) S.C.C. 412.

5. Mahavir Singh v. Naresh Chandra, AIR 2001 SC 134.