IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14374 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J. SHELAT

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Approved for Reporting	Yes	No
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JAINULABEDIN ABBASALI SAIYED
Versus
NOORBANU IBRAHIM KURESHI & ORS.

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Appearance:
MR SP MAJMUDAR FOR MR SHEGUN B CHOKSHI(12790) for the Petitioner(s) No. 1
MR AR SHAH(7768) for the Respondent(s) No. 1,10,2,3,4,5,6,7,8,9

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Date : 16/10/2026
JUDGMENT

1. Heard Mr.S.P.Majmudar, learned advocate for Mr.Shegun Chokshi, learned advocate for the petitioner and Mr.A.R.Shah, learned advocate for the respondents.

2. Rule returnable forthwith. Mr.Shah, learned advocate waives service of Rule for the respondents.

3. The present writ application is filed under Article 227 of the Constitution of India, seeking following relief :-

> *"A. YOUR LORDSHIPS may be pleased to issue a writ of certiorari and/or a writ in the nature of certiorari and/or any other appropriate writ, order or direction, quashing and setting aside the order*

dated 31.08.2026 passed below Exh. 12 in Regular Civil Appeal No. 276 of 2025 by the learned 6 Additional District Judge, Vadodara (Annexure A to the present petition), and further be pleased to allow the application dated 16.06.2026 below Exh, 12, in the interest of justice;

B. During the pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay the impugned order dated 31.08.2026, passed below Exh. 12 in Regular Civil Appeal No. 276 of 2025 by the learned 6th Additional District Judge, Vadodara (Annexure A to the present petition)and be pleased to stay further proceedings of Regular Civil Appeal No. 276 of 2025, in the interest of justice;"

SUBMISSIONS OF THE PETITIONER :

4. At the outset, Mr.Majmudar, learned advocate for the petitioner, would submit that the impugned application filed below Exh.12 in Regular Civil Appeal No.276 of 2025 came to be rejected by the appellate Court, though the same was filed under Order 41 rule 27 of CPC, inasmuch as the impugned application ought to have been heard and decided by the appellate Court at the time of final hearing of the said Regular Civil Appeal.

4.1 In support of his argument, Mr.Majmudar, learned advocate, would refer and rely upon the following decisions of the Hon'ble Apex Court as well as this Court wherein a similar factual situation, where application under Order 41 rule 27 of CPC came to be rejected by the appellate Court, and having challenged such order either before this Court or before the Hon'ble Apex Court as the case may be, the view taken by the

Court that such application requires to be head and decided along with the appeal.

(i) Union of India Vs. Ibrahim Uddin and another - (2012) 8 SCC 148.

(ii) Mukulbhai Rajendra Thakor, Trustees of Shri Sad Vidya Mandal Vs. Upendrabhai Anupam Joshi - 2018(0) AIJEL-HC-239686 : 2019(0) AIR (Guj.) 42.

(iii) State of Rajasthan Vs. T.N. Sahani - 2000(0) AIJEL-SC 29606 : 2001(10) SCC 619.

4.2 Making the above submissions, Mr.Majmudar, learned advocate, would request this Court to remand the matter back to the appellate Court, with a direction to decide the impugned application so filed under Order 41 Rule 27 of CPC along with the appeal.

SUBMISSIONS OF THE RESPONDENTS :

5. *Per contra*, Mr.Shah, learned advocate for the respondents is unable to dispute the ratio laid down by the Hon'ble Apex Court in the cited decisions but would contend that there is no merit in the application, inasmuch as ingredients of Order 41 rule 27 of CPC was not made in the impugned application. Nonetheless, learned advocate for the respondents would leave to the discretion of this Court in regards to remand of the matter back to the appellate Court, thereby the impugned application may be decided at the time of hearing the said appeal. He would place reliance upon following decision in support of his argument.

(i) Malayalam Plantations Ltd. V/s State of Kerala and another - (2010) 13 SCC 487.

5.1 By making the above submissions, Mr.Shah, learned advocate for the respondents would request this Court to pass an appropriate order.

ANALYSIS :

6. Having heard learned advocates for the respective parties, and so also issue germane in the application, according to this Court, is squarely covered by the decisions of the Hon'ble Apex Court as well as by this Court in the case of ***(i) Ibrahim Uddin (supra)***, wherein held thus :-

> *"**52.** Thus, from the above, it **is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record**, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/ inexecutable and is liable to be ignored.*

***(ii) Malayalam Plantations (supra)**, wherein held thus:-*

> *"**16. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the***

part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the ssues involved*. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature.*

17. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case. Adducing additional evidence is in the interest of justice*. Evidence relating to subsequent happening or events which are relevant for disposal of the appeal, however, it is not open to any party, at the stage of appeal, to make fresh allegations and call upon the other side to admit or deny the same. Any such attempt is contrary to the requirements of Order 41 Rule 27 of CPC. Additional evidence cannot be permitted at the Appellate stage in order to enable other party to remove certain lacunae present in that case."*

(iii) Mukulbhai Rajendra Thakor, Trustees of Shri Sad Vidya Mandal (supra)*, wherein held thus:*

5.1 ***Thus, it is clear from the above pronouncements of the Apex Court that the application for taking additional evidence when made at the appellate stage, it is to be considered at the stage after appreciation of the evidence on record. In another words, it is to be kept pending till the hearing of the appeal so that the appellate court could consider at the time of deciding appeal as to whether the additional evidence sought to be produced are necessary to be considered and***

are relevant. The discretion to allow or reject the additional evidence could be judicially exercised only at the stage of finally considering the appeal. In view of the above position clearly emerging from Ibrahim Uddin learned Principal District Judge, Bharuch, ought not to have rejected the applications. Therefore, in view of law laid down in Malyalam Plantations Ltd. and in Ibrahim Uddin*, learned Additional District Judge, Bharuch, committed an error in rejecting the application Exh.29 of the petitioners.*

6. The application below Exh.29 was under Order XLI Rule 27 for additional evidence filed in the appeal proceedings and therefore was required to be considered at the time of deciding the appeal. It is, therefore, for the court below to consider and take decision one way or other as to the applicability of the same which shall be at the time of deciding the appeal. The appeal shall be decided with reference to the conclusion which the court below may arrive at in respect of Exh.29 application. The court below shall take a decision as per the mandate of the provisions of Order XLI Rule 27, CPC.

(iv) T.N. Sahani (supra)*, wherein held thus :-*

"3. The application filed under Order 6, Rule 17 came to be dismissed. Taking that aspect into consideration, the ***High Court dismissed that application under Order 41, Rule 27 also as in its view, where the amendment application of the appellant seeking amendment of the Memorandum of Appeal in respect of the documents sought to be placed on records was disallowed****, "how can the said documents be required for pronouncing the judgment or for any other substantial cause".*

4. It may be pointed out that this Court as long back as in 1963 in ***K. Venkataramiah v. Seetharama Reddy, AIR 1963 Supreme Court 1526****, 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, it could not be required additional evidence 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 be Court to look into the documents and for that purpose amended provision of Order 41, Rule 27(b), C.P.C. can be invoked. So the application under Order 41, Rule 27 should have been decided along with the appeal. Had the court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view would be inappropriate****. Further, the reason given for the dismissal of the applications is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will not consider the appeal and the application and decide the matter afresh in accordance with law.”*
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> *(emphasis supplied)*

7. In light of aforesaid, as held by the Hon’ble Apex Court as well as by this Court in the above referred decisions, and so also, there would remain consensus ad-idem between the learned advocates for the respective parties that, if the matter is order to be remanded back, then the impugned application requires to be heard and decided along with the appeal. It

would be gainsaid that whenever an application filed by parties to the appeal under Order XLI Rule 27 of CPC requesting the appellate Court to allow such party to submit additional evidence, such application needs and requires to be heard along with appeal but not prior thereto.

8. As in the case on hand, the appellate Court unmindful of afore stated position of law heard and decided the impugned application filed in the aforesaid provision of law. To that extent, interference of this Court requires, so gross error of law committed can be cured.

9. For the forgoing reasons, the impugned order dated 31.08.2026 passed by the 6th Additional District Judge, Vadodara below Exh.12 in Regular Civil Appeal No.276 of 2025 is hereby quashed and set aside. Consequently, the impugned application filed below Exh.12 in the aforesaid appeal, is restored back on its file and to be heard and decided along with the Regular Civil Appeal No.276 of 2025 in accordance with law, without being influenced by any of the observations so made by the appellate Court while passing the order impugned in the present writ application and by this Court in its any order including present one.

10. It is further made clear that this Court has neither gone into nor examined the merit of the impugned application as the impugned order is quashed and set aside due to the aforesaid reasons. So, the appellate Court shall decide it afresh, albeit in accordance with law.

11. In view of aforesaid conclusion, the present writ application is partly allowed to the aforesaid extent. Interim relief, if any, granted earlier stands vacated forthwith. Rule is made absolute, accordingly.

(MAULIK J. SHELAT, J)

GAURAV J THAKER

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: GAURAVKUMAR JANARDANBHAI THAKER(HC00951), Principal Pvt. Secretary, at High Court of Gujarat on 16/10/2026 14:21:01