

C.P.C. Order-41

1. Rule-27: The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary in the Appellate court, unless; the party satisfies the Appellate court that such evidence notwithstanding the exercise of due diligence was not within his knowledge or could not be produced by him at or before the time when the decree under appeal was passed. | *18 MLR(AD) 92, 8 MLR(HCD) 401, 11 MLR(AD) 385*
2. Rule-27(1): It is clear that this power can be exercised only where the court requires further evidence for one of two causes specified in the rule. | *2 ADC 195*
3. Rule-27: When judgement and decree was passed an admitted position of the surveyors report we do not find any reasons for additional evidence to enable the court to dispose of the appeal. | *21 BLC 55*
4. Rule-27: This is an exclusionary provision restricting the production of additional evidence with exceptions as mentions in this sub-rule. In the facts of instant case, in the absence of any order of the appellant court requiring production of any evidence, any party may, by permission of the appellate court, produce the dead in question "for any other substantial cause" as provided. | *1 LM(AD) 385*
5. Rule-27: Lacuna: For adducing additional evidence in the appellate stage in certain circumstances remand can be allowed under rule-23 and rule -27 of the code in the interest of justice but not to fill up the **Lacuna** of any parties case. | *2 XP 16, 1 ADC 131, 23 BLT(AD) 96, 7 MLR(AD) 254, 15 MLR(HCD) 203, 4 BLD(HCD) 296, 26 DLR 31, 9 DLR 682*
6. Rule-23: Remand... - Cannot go Beyond Limit: The trial court cannot go beyond the limits set down by the remand order and cannot open the finding of the appellate court. | *2 LNJ 367*
7. Rule-23 and Rule-27: Additional Evidence With Remand: Rejected the application for adducing additional evidence under rule-27 as the natural death of the plaintiff and the same cannot be sustained in law, the suit sent back to remand for additional evidence. | *1 XP(AD) 194*
8. Rule-19: CP Cost -->Restore: In a miscellaneous case for restoration of an appeal under rule-19 was dismissed for non-payment of C.P. Cost as directed by the court and the court ha no scope to **restore** the appeal even subsequently deposited the cost after passed the dismissal order. | *2 XP(AD) 24*
9. Rule-23: No remand until failure of justice. | *2 ADC 668*
10. Rule-19: Re-admission: This rule gives ample power to the court to re-admit the appeal dismissed for default in the court is satisfied that the appellant was prevented by any sufficient cause from appearing before it when the appeal was called on for hearing . The only point for consideration before the court in deciding an application under this rule is **whether the applicant appearing** when the impugned ex-party order was passed. | *2 ALR 204*
11. Rule-27: For the end of justice, latest position of any documents can be file before the court as additional evidence. | *4 ALR 223, 6 BLD(AD) 95*
12. Rule-27: The HCD has power to entertain additional evidence. | *7 ALR 207*
13. Rule-23:Remand on Flimsy Ground: The HCD did not consider even a single piece of evidence nor did it consider any of the exhibits in the suit. The Appellate Division does not approve of any remanding a suit on such flimsy ground. | *6 ALR(AD) 42*
14. Rule-23 and rule 31: Remand: The HCD as the last court of fact to see whether the trial court was correct is dismissing the suit, instead of sending the suit on remand to trial court on point which was never urged by any of the parties in the appeal. | *67 DLR(AD) 266, 9 BLC(AD) 218*
15. Rule-27: Right to Adduce Evidence: The rule does not confer any right to the party to adduce additional evidence. The need for additional evidence must be felt by the court itself. When evidence was not adduced by the defendant at the trial stages, at the appellate stage he **cannot claim as of his right** , an opportunity to adduce evidence. | *67 DLR(AD) 119*

16. Rule-31: Remand:- Fill up Lacuna: All the materials for deciding the suit finally were before the appellate court. The judgement and order of remand has been passed by the final court of facts in order to **fill up lacuna**. It is not the duty of the appellate court to give an opportunity to the erring party to fill up lacuna
... | **67 DLR 240**
17. Rule-19 and rule -19(A) read with Sec.-5 of the Limitation Act: Thus, from the above provision of the code it appears to us that the concept of ex-parte disposal of an appeal on merits in either ways in absence of the appellant has not been conceived of the code. Had the concept of disposal of an appeal on merits in absence of the appellant was conceived of the provision of re-admission of an appeal dismissed for default would not have been made. | **23 BLT(AD) 72**
18. Rule-31: Reversing decree must give reasons: Law enjoys that the appellate court must give reasons whether affirming or reversing a findings and it is moreso,when he is reversing it. The appellate court in his judgement is on bounded duty to rebut the findings of the trial court adverting evidence on records which is absent in the instant case. Farther more: the judgement must contain definite findings on the question, involved and **must give reasons** when reversing the material finding of the trial court. | **23 BLT(HCD) 95, 23 BLT(HCD) 86, 9 MLR(HCD) 421, 6 MLR(HCD) 6, 10 MLR(HCD) 255, 5 BLD(AD) 54**
19. Rule-31: Relief Sought in the Averment: The plaintiff though sought the relief as against the decree of the former suit but the said was not incorporated in the prayer portion of the suit but for any reason of the relief was sought have not been over looked by the appellate court below. | **23 BLT(HCD) 320**
20. Rule-21: Service Return: Service return shows that the appellant was not at Barisal at the relevant time, the service in the eye of law in absence of any written document authorizing respondent No-1 to act as her agent to receive any summon or notice and hence no agency is created and the appeal was disposed of ex-parte and it will be reheard. | **6 BLC(HCD) 130**
21. Rule-23: Praying remand must be in appropriate time for trial. | **6 BLC(AD) 50**
22. Rule-27: This discretion should not be given a restricted interpretation as would, in effect, amount to tying down the hands of the appellate court and stand in the way of doing complete justice in case. | **6 BLC(AD) 98**
23. Rule-31: It is a settled principle of law that the lower appellate court being final court of fact will have to **discuss and reassess the evidence** on record independently while either reversing or affirming the finding of the trial court. | **8 BLC(AD) 77**
24. Rule-31: The law is well settled that the extent of jurisdiction of the revisional court is limited. | **10 BLC(AD) 34**
25. Rule-5: Not Automatic Stay of Judgement or Order: Mere filing of appeal does not entitled the appellant to get the impugned judgement or order automatically stayed. It is the discretion of the appellate court to grant stay when there is compelling situation. | **6 MLR(HCD) 347, 6 MLR(HCD) 313, 8 MLR(HCD) 261, 19 DLR(SC) 143, 29 DLR(SC) 282**
26. Rule-19 with section-5 of the Limitation Act: On question of limitation both **government and public litigant** stand on equal footing. | **6 MLR(HCD) 73**
27. Rule-19 with Section-149 of C.P.C and Court Fees Act sec-6(2): The provision is not applicable when the memorandum of appeal is rejected on ground of **non-payment of deficit court fee**. | **9 MLR(HCD) 265**
28. Rule-19 With Order-5 Rule-19(B),(2) With sec-27 of General Clauses Act and With Sec-114(f) of Evidence Act: Registered service notice "refused" --- No scope to allowing application under Rule-21 of Order-41. | **6 MLR(HCD) 145**
29. Rule-23: Not to fill Lacuna: Remand cannot be ordered to **fill up the lacuna** to the detriment of interest of adverse party. | **6 MLR(AD) 179, 12 MLR(AD) 149**
30. Rule-23: Reman on Permanent Injunction: When in a suit for permanent injunction the plaintiff succeeds in proving his primafacie title and exclusive possession in definite and specific land by evidence on record, he is entitled to a decree for permanent injunction. In the face of such evidence already on record there cannot be any ground to send the suit remand for re-hearing. | **8 MLR(AD) 49**
31. Rule-27: The rule provides for additional evidence at the appellate stage for the purpose of effective adjudication the dispute. No illegality held when dispose the appeal by a single judgement without recording separate finding on the application under this rule. | **6 MLR(AD) 87**
32. Rule-27 With Sec-115 of C.P.C. in a Partition Suit: If the matter under **controversy** is beyond the pleadings additional evidence thereon **cannot be allowed at the appellate stage**. Revisional Application is not maintainable when rules are not shout to be issued against all the parties who were granted saham in the partition suit. | **9 MLR(AD) 361**

33. Rule-27 with sec-67 of the Evidence Act: Additional evidence at the appellate stage means that **evidence so adduces in order to be admissible must be proven as required by law**. Mere filing of document at the appellate stage without complying with the requirements of se.-67 of the Evidence Act shall not be admissible in evidence and as such the document so filed cannot be taken into consideration. | **6 MLR(AD) 46**
34. Rule-31: Jurisdiction of appellate court to decide the issue of fact and law. | **7 MLR(AD) 7**
35. Rule-21: Service Notice: Dispensing with the requirement of service notice on non-contesting defendant is not a bar to re-hearing the appeal. | **14 MLR(HCD) 308**
36. Rule-27: Plaintiff could not produce **vital document** of contract--- He produce the documents at the appellate stage-- Nothing is wrong. | **15 MLR(AD) 241**
37. Rule-23: Admissibility Evidence at Belated Stage: When the defendant **did not pray for saham before the trial court the HCD did not allow them to adduce evidence** by producing certain documents at the belated stage of the proceedings of the appeal which was held defective as appellant did not challenge the preliminary decree granting saham to the plaintiff. | **12 MLR(AD) 269**
38. Rule-21: Applicable to Appeal But not Revision: This rule is only applicable to appeal but not to revision. Once a revision is **disposed of on merit** by a regular judgement, there is not further scope of re-hearing the same. | **12 MLR(AD) 51**
39. Rule-23: Remand cannot be granted when there are sufficient evidence on record to effective decide the issue under controversy. | **15 MLR(HCD) 174**
40. Rule-4 and Rule -33: Abatement of Appeal: During the pendency of the appeal the appellant **failed to substitute the heirs of the deceased respondent** --- it s well settled that in a case of possibility of two inconsistent decrees, the appeal as a whole abates. | **10 BLD(HCD) 447, 20 DLR 762**
41. Rule-4 : Abatement of Appeal: On the death of a **non-substituted appellant the appeal against him** and it is to be taken that he has not appealed. But this rule, the other **defendant appellant are entitled to make an appeal** and carry it to conclusion. | **11 BLD(AD) 161, 4 DLR 400, PLD 1972(SC) 321, PLD 1974(SC) 322, 32 DLR(AD) 96, 12 DLR 745, 16 DLR(SC) 386**
42. Rule-5(1): Appellate Court's Power of Stay: The appellate court has got the jurisdiction to pass an order staying the operation of the **ad-interim order of injunction** passed by the trial court at the time of admission of the appeal by the lower appellate court. | **12 BLD(HCD) 517, 35 DLR(AD) 42**
43. Rule-17 and Rule -19: Appeal Dismissed Exparte--on merit: Whether appeal can be dismissed on **merits exparte** -- when the appellant or his counsel fails to appear when a appeal is called on for hearing the appellate court can only dismissed the appeal for default -- it has no power to deliver judgement on merits -- even if the appeal is dismissed on merits, this will be treated as dismissal for default and the appellant's remedy will remain open. | **4 BLD(HCD) 321, AIR 1929(Cal) 475, AIR 1953(Assam) 191, AIR 1962(Panjab) 82, AIR 1963(Patna) 166**
44. Rule-19:Family Court Ordinance,1985: District judge and Joint district judge is not a Family Court | **10 BLD(HCD) 404, 39 DLR(AD) 172**
45. Rule-22: Cross objection ----- | **3 BLD(AD) 62**
46. Rule-22: Dismissal of the suit in an appeal by the plaintiff against adverse finding. | **3 BLD(AD) 277**
47. Rule-23: Where remand to the court by the HCD without remanding to appellate court when no further evidence was allowed to be adduced justified --- indiscriminate order of remand testament to shirking the responsibility. | **3 BLD(AD) 132, 6 BLD(AD) 135**
48. Rule-23: Remand by the revisional court when not justified?? | **6 BLD(AD) 156**
49. Rule-23: Remand in Partition Suit:: Prayer For Saham: Consideration of prayer for Saham on basis of documents admitted into evidence in the absence of oral evidence to connect the documents with the defense case The documents having been lawfully admitted into evidence but not considered for want of oral evidence and the suit being partition suit, the court ought to have granted the prayer for remand. **8 BLD(AD) 3**
50. Rule-27: Before judgement is pronounce in appeal there may be no harm if a vital piece of evidence is produced, though late, so that the court may prevent an injustice being done. | **4 BLD(AD) 320, PLD 1966(SC) 684**
51. Rule-27: The constitutional obligation of the Supreme Court being to do complete justice in any case or matter due consideration to these annexure to **clarify the factual position** which in the final analysis can be given by the trial court. | **8 BLD(AD) 141**
52. Rule-27: The Basis of the Taking Additional Evidence: The Words "in the interest justice" read with other reasons given..... .. The basis of taking additional evidence depends on the appreciation by the court

- allowing it, if the **evidence already on record, interest of justice, nature of documents or evidence having a bearing on the subject matter of the suit** or for any other substantial cause. | *11 BLD(HCD) 523, 43 DLR(AD) 16, 43 DLR 204, 4 BLD(AD) 285, AIR 1959(Bom) 300, AIR 1945(Cal) 492, PLD 1966(SC) 684*
53. Rule-31: When appellate court is justified in reversing findings of facts by the trial court? | *4 BLD(AD) 107, AIR 1960(SC) 115, AIR 1950(SC) 120*
54. Rule-31: Points of Determination: Point of determination by the appellate court.... .. | *6 BLD(AD) 56, AIR 1967(SC) 1124, AIR 1963(SC) 146*
55. Rule-33: Power of appellate court even if no courts--- objection filed | *5 BLD(AD) 202, 15 DLR 225, AIR 1963(SC) 1516, AIR 1939(Cal) 582, AIR 1962(Pat) 140, 35 CWN 1185*
56. Rule-4 and Rule-33: On setting aside of the order of the lower appellate court by the HCD, the appeal before the lower appellate court become pending and after arrival of the records, **opportunity for substitution of heirs was available** as the appeal did not abate. | *32 DLR(AD) 96*
57. Rule-5: With Order-35 Rule-13: Appeal does not **automatically operate as a stay of execution of decree** arising out of original Decree. | *35 DLR(AD) 1, 28 DLR 309*
58. Rule-23: Remand order is appealable. | *11 DLR 7, 7 DLR 466*
59. Rule-23 and Rule-24: Party cannot claim for order when finds by his **own act he has been non-suited**. | *36 DLR 41*

Collected By: [Adv. Md. Shahnewaz Zwaki \(Imon\)](#)