

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2788 of 2013

Date of decision : 03.12.2015

Balkar Singh

...Petitioner

Versus

Harvinder Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rakesh Nagpal, Advocate for the petitioner.

None for the respondents.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the order dated 04.04.2013, whereby the ld. Addl. District & Sessions Judge has allowed the application filed under Order 41 Rule 27 despite the fact that Civil Appeal bearing No.218 of 2011 is still pending.

Mr. Rakesh Nagpal, learned counsel appearing on behalf of petitioner submits, that the procedure adopted by the lower Appellate Court is unknown to the settled law inasmuch as that application for additional evidence under Order 41 Rule 27 has to be decided along with appeal. In support of his contention, he has relied upon judgment rendered by Hon'ble

Supreme Court of India in *Malayalam Plantations Ltd. Vs. State of Kerala and another*, 2011 AIR (SC) 559.

There is no representation on behalf of respondents. Though Mr. D.S. Virk, Advocate had put in appearance on behalf of respondent No.1. For the last two dates, there is no representation. Accordingly, I proceeded to decide the present revision petition as there is interim stay against respondents and in favour of petitioner.

In view of ratio decidendi culled out by Hon'ble Supreme Court in *Malayalam Plantations Ltd. Vs. State of Kerala and another*, 2011 AIR (SC) 559, which reads thus:-

“11. 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 issues 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. 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.”

I am of the view that the lower Appellate Court has committed illegality and perversity in not deciding the application along with appeal

which is stated to be pending.

Accordingly, impugned order is set aside.

The appellate Court is directed to decide the application stated to have been filed under Order 41 Rule 27 CPC along with appeal.

Revision petition stands allowed.

03.12.2015

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**(AMIT RAWAL)
JUDGE**