

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4145 of 2013 (O&M)
Date of decision: 10.03.2015

Canara Bank

... Petitioner

versus

Bhushan Lal

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aalok Jagga, Advocate for the petitioner.

Mr. P.L. Singla, Advocate for the respondent.

K.Kannan, J.

The order passed cannot be sustained, for the Court exercising the jurisdiction under Order 41 Rule 27 shall not take up the application independently of the appeal. There is a duty of the Appellate Court to hear the appeal along with the application and if the application is to be allowed and the document produced as additional evidence could be received without any further evidence, the Court may proceed to dispose of the appeal. However, on the other hand, the court finds that there was no justification for the additional evidence, it may dismiss the application while hearing the appeal and dispose of the appeal independently. Yet another mode of disposal would be when the court finds that evidence would be necessary for the additional evidence which is brought before the Court, it shall take the evidence itself or direct appropriate evidence to be collected by remand of the matter. The procedure about how it should be dealt with, is set out in Order 41 Rule 28 in clear terms but the said procedure has not been followed:

28.Mode of taking additional evidence: Wherever

additional evidence is allowed to be produced, the Appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

The order passed already is set aside and the application for additional evidence is directed to be disposed of along with the appeal in the manner stated under Order 41 Rule 28 C.P.C. The civil revision is allowed on above terms. It is needless to say that any observations made in the impugned order by the court below shall not be allowed to be used to influence the mind while considering the application afresh along with the appeal.

(K.KANNAN)
JUDGE

10.03.2015

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