

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

C.R.No.576 of 2014 (O&M)
Date of decision: 29.10.2015

Raj Singh

... Petitioner

Vs.

Surjit Singh

... Respondent

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. Ashok Verma, Advocate
for the petitioner.

Mr. Amandeep Singh Saini, Advocate
for Mr. P.S.Jammu, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 06.12.2013, (Annexure P-7), whereby, the lower Appellate Court before arguments on the final hearing of the appeal could be addressed, has allowed the application filed under Order 41, Rule 27 read with Section 151 of the Code of Civil Procedure. In essence, appeal is still pending.

Mr. Ashok Verma, learned counsel appearing on behalf of the petitioner submits that procedure followed by the lower Appellate Court is not in accordance with the ratio decidendi culled out by the Hon'ble Supreme Court in **State of Rajasthan vs. T. Sahani 2001(2)**

R.C.R.(Civil) 419 and it is settled law that the application for additional evidence has to be considered along with the appeal and not independently.

Mr. Amandeep Singh Saini, learned counsel appearing on behalf of the respondent submits that no prejudice would be caused to the petitioner, in case, the impugned order is allowed to sustain as it would help the lower Appellate Court to adjudicate the controversy by taking into consideration the evidence sought to be placed on record by way of additional evidence.

I have heard learned counsel for the parties and appraised the paper book.

As per the ratio decidendi culled out by the Hon'ble Supreme Court in State of Rajasthan's case (supra), it is settled law that application for additional evidence has to be decided along with appeal and not independently. Appeal is still pending, therefore, impugned order is vitiated in law, much less, not sustainable. Accordingly, the impugned order is set aside and the lower Appellate Court is directed to consider the application filed under Order 41, Rule 27 read with Section 151 of the Code of Civil Procedure along with appeal and decide the same in accordance with law.

Accordingly, revision petition is allowed.

October 29, 2015
savita

(AMIT RAWAL)
JUDGE