

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

CR-96-2013

Date of decision : 08.12.2015

Dalip Kaur

...Petitioner

Versus

Gurdial Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

Mr. H.R. Bhardwaj, Advocate for
Mr. J.S. Brar, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

Mr. Tribhawan Singla, Advocate appearing on behalf of the petitioner-plaintiff submits that Lower Appellate Court being the last court of fact and law, enjoined upon the obligation to decide the appeal strictly in accordance with the provisions of Section 96 of the Code of Civil Procedure (for short 'CPC') much less by framing the points of determination as per the provisions under Order 41, Rule 31, whereas ongoing through the order, the appeal has not been admitted and the same has been dismissed in limini. In case, the Lower Appellate Court had passed the order after admitting the appeal after issuing notice to the other party and, therefore, the appellant levelled law assailed by filing appeal under Section 100 CPC. However, the manner and mode adopted in which appeal has been dismissed in liminie, is unknown to law, and has taken away of consideration of statutory appeal filed under Section 96 CPC.

Mr. H.R. Bhardwaj, Advocate for Mr. J.S. Brar, Advocate appearing on behalf of the respondent, submits that there is no illegality and perversity in the order and the same is based upon the legal provisions and has rightly been dismissed.

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

The appeal at the instance of the petitioner/plaintiff was not a miscellaneous application, but was filed under Section 96 CPC as it was against the judgment and decree. Decree has been defined under sub-Section 2 of Section 2 CPC.

The Lower Appellate Court was enjoined upon the obligation to decide the appeal in accordance with law, as noticed above and not in the manner and mode as has been adopted.

I am of the view that the petitioner-plaintiff has been deprived of the statutory right of the appeal before the Lower Appellate Court being the last court of fact and law.

Keeping in view the aforementioned facts, the impugned order dated 08.11.2012, is set aside and the matter is remitted back to the Lower Appellate Court to decide the appeal on merits.

Learned Counsel for the parties are directed to appear before the Lower Appellate Court on 07.01.2016.

The revision petition stands allowed.

08.12.2015
yogesh

(AMIT RAWAL)
JUDGE