

203.

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

Civil Revision No.4604 of 2003 (O&M)

Date of decision: 22.12.2015

Nachhatar Singh

... Petitioner

versus

Darshan Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

Mr. Swaran Singh Tiwana, Advocate,
for respondents 3 and 4.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The revision is against an order passed in an application filed under Order 41 Rule 27 CPC. The court has kept the appeal pending and disposed of the application by dismissing the same.

The procedure followed by the court is erroneous and it is set aside for the following reasons.

2. The court that entertains an application at the appellate stage shall only take up the application along with the documents in appeal and not independently thereof. If the court finds at the time

of judgment that the documents brought at the appellate court or opportunities sought for additional evidence were not justified and they do not satisfy the requirements as set out under Order 41 Rule 27 CPC, the court shall be justified in dismissing the application and passing a judgment at the same time. If, on the other hand, it finds that there was justification in non-production of the documents or there was justification as prescribed under Rule 27, it shall do what Rule 28 prescribes. Rule 28 requires that where additional evidence is to be allowed to be produced, the appellate court shall take such evidence and direct the court from where the decree was preferred to take such evidence and send it to the appellate court. Rule 28 itself is an indication that the application under Order 41 Rule 27 CPC shall not be disposed of dismissing the same and such separate order will be passed only in a situation where additional evidence is to be given. If the court had decided that there was no circumstance for admitting the additional evidence, such order shall form part of the judgment disposing of the appeal and cannot be passed independently thereof.

3. I set aside the order passed by the court below as a serious error in procedure and allow the revision only for a consideration of the appeal on its merits and the court will independently exercise its mind of whether it finds sufficient justification for production of additional evidence at the appellate

court. If it finds that there was no justification, the judgment shall be pronounced at the same time when it passes an order under application filed under Order 41 Rule 27 CPC. If otherwise, the court will follow the procedure as prescribed under Rule 28. The court may also follow the procedure prescribed under Rule 41 Rule 23-A CPC, if there is a case made for a fresh trial which can be ordered only if it finds adequate reasons for setting aside the judgment of the trial court.

4. The impugned order is set aside and the revision petition is disposed of with the above directions.

(K.KANNAN)
JUDGE

22.12.2015
sanjeev