

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

RSA No.2689 of 2010 (O&M)

Date of decision : 29.09.2015

Jasbir Singh & ors.

...Appellants

Versus

Gurvail Singh & another

...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. Harsh Garg, Advocate for appellants.

Mr. Arun Bansal, Advocate for respondent No.1.

Ms. Sarvpreet Gurna, Advocate for
Mrs. J.K. Gurna, Advocate for PUDA.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree of the lower Appellate Court, whereby appeal of the appellants-defendants has been dismissed and the judgment and decree of the trial Court has been upheld.

Mr. Harsh Garg, learned counsel appearing on behalf of appellants submits that along with appeal, an application under Order 41 Rule 27 of Code of Civil Procedure seeking indulgence of the Court, to place on record certain documents by way of additional evidence was filed.

However, the said application remained undecided, which fact surfaced from the perusal of the zimni order of Additional District Judge, Mohali. In support of his contentions, he has relied upon judgment of Hon'ble Supreme Court in *Jatinder Singh and another minor through Mother Vs. Mehar Singh and ors. 2009(1) RCR (Civil) 253*, to contend that where the lower Appellate Court failed to decide such application filed along with the appeal, much less, does not pass any order either declining or allowing the same. The matter should be remanded back to the lower Appellate Court with direction to decide the appeal afresh along with application aforementioned for leading additional evidence.

Mr. Arun Bansal, learned counsel appearing on behalf of respondent No.1 submits that it is a matter of record that application under Order 41 Rule 27 of Code of Civil Procedure was filed, but the appellants-defendants did not press the same and, therefore, the lower Appellate Court did not have any occasion to decide the same. He further submits that appellants-defendants are adopting dilatory tactics and in case the matter is required to be remanded back, the lower Appellate Court may be directed to dispose of appeal within the time frame.

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

From the perusal of the record of Courts below, it is evident that though an application under Order 41 Rule 27 CPC along with appeal was filed but the same remained undecided. The ratio decidendi culled out by Hon'ble Supreme Court in *Jatinder Singh's case (Supra)* is squarely applicable to the facts and circumstances of the case.

The lower Appellate Court being last Court of fact and law, is enjoined upon obligation to decide the application, filed along with or during pendency of the appeal. The manner and mode in which the appeal has been disposed of without deciding the application in my view reflects non-application of mind.

In view of what has been observed above, the present appeal is allowed. Impugned judgment and decree dated 03.05.2010 of the lower Appellate Court is set aside and matter is remanded back to the lower Appellate Court, in essence, appeal bearing No.109 of 24.03.2008 is restored to its original number.

Parties through their counsel are directed to appear before the lower Appellate Court on 15.10.2015.

It is directed that Lower Appellate Court shall decide the appeal alongwith the application for additional evidence in accordance with law preferably within a period of 5 months from the date of receipt of certified copy of this order.

Record of the Courts below be also sent back.

29.09.2015

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**(AMIT RAWAL)
JUDGE**