

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

**RSA No.4196 of 2011 (O&M)
Date of decision:17.11.2015**

Nishan Singh

... Appellant

Vs.

Gram Panchayat Janesron and others

... 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. Kulwant Singh, Advocate
for the appellant.

Mr. Nonish Kumar, Advocate
for respondent No.1.

Mr. Bhim Singh, Advocate
for respondents No.2 and 3.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree of the lower Appellate Court, whereby, the lower Appellate Court without deciding the application under Order 41 Rule 27, though noticed in the zimni orders, decided the appeal.

It is settled law that an application for additional evidence has to be decided along with the appeal.

Mr. Kulwant Singh, learned counsel appearing on behalf of the appellant has drawn attention of this Court to the zimni orders reproduced in the grounds of appeal which show that application for additional evidence was filed but there has not been any adjudication

of the application independently or in the impugned judgment.

It would be apt to reproduce the zimni orders which read thus:-

“Present: Shri Mohinderjit Singh, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Today an application for additional evidence has been filed by the appellant. Copies of same be supplied to other side. To come up for reply and arguments on this application on 14.09.2010.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal*

August 7, 2010

Present: Shri Mohinderjit Singh, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Learned counsel for respondent No.1 requests for adjournment contending that he has to obtain certain documents from Hon'ble High Court and only week's

time be given. As such only in the interest of justice the case is adjourned to 09.11.2010 for reply, if any and arguments on the application for additional evidence, as well as, on the merits of appeal.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
14.09.2010.*

Present: Shri Mohinderjit Singh, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Reply to the application for leading additional evidence filed. Copy given. Adjournment is requested by learned counsel for the respondent which is not opposed by the other side. Adjourned to 20.12.2010 for arguments on the application as well as on merits of the appeal.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
9.11.2010.*

Present: Shri Mohinderjit Singh, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Adjournment is requested by counsel for the appellant on the ground that he has to go out of station on account of some personal work. Request not opposed by the other side. Adjourned to 03.03.2011 for arguments on the application as well as on merits of the appeal.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
20.12.2010.*

*Present: Shri S.K.Sehgal, Advocate as proxy for
Shri Mohinderjit Singh, Advocate for the appellant.*

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Learned proxy counsel for the appellant requests for adjournment contending that learned counsel for the appellant is not available today. Adjournment not opposed. In the interest of justice the case stands adjourned to 17.05.2011 for arguments on application as well as in the main appeal.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
03.03.2011.*

Present: Shri Mohinderjit Singh, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

On the request of counsel for the parties, the appeal is adjourned to 05.08.2011 for arguments on the application as well as on merits of the appeal.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
17.05.2011*

Present: Shri Mohinderjit Singh, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Adjournment is requested by learned counsel for the appellant on the ground that he could not prepare the arguments due to ill health. Request not opposed. Case is adjourned to 10.08.2011 for arguments.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
05.08.2011.*

Present: Shri R.S.Chauhan, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Short adjournment is requested by learned counsel for the appellant for arguments contending that he is not prepared with the arguments. Request not opposed. Case is adjourned to 11.08.2011 for arguments.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
10.08.2011.*

Present: Shri R.S.Chauhan, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Arguments heard but not concluded. For remaining arguments, case to come up on 23.08.2011.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
10.08.2011.*

Present: Shri R.S.Chauhan, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Arguments concluded. For orders, to come up after lunch break.

*Sd/-(Raj Rahul Garg)
District Judge, Karnal
23.08.2011.*

Present: Shri R.S.Chauhan, Advocate for the appellant.

Shri G.S.Arora, Advocate for respondent No.1

Respondents No.2 and 3 already ex parte in trial Court.

Shri Daljit Singh Mann, Advocate for respondent No.4.

Respondent No.5 ex parte.

Vide separate judgment of even date, the appeal has been dismissed. Parties are left to bear their own costs. Decree sheet be prepared accordingly and file be consigned to record room.”

*Sd/-(Raj Rahul Garg)
District Judge, Karnal*

*Announced in open Court
23.08.2011.”*

Mr. Nonish Kumar, Advocate and Mr. Bhim Singh, Advocate appearing on behalf of respondents No.1 and 2 & 3 respectively do not dispute the aforementioned fact and submit that there is no illegality and perversity in the impugned judgment and decree of the lower Appellate Court as the lower Appellate Court on the basis of the oral and documentary evidence found that plaintiff has failed to prove the case as pleaded.

I have heard learned counsel for the parties and

appraised the impugned judgment and decree of the lower Appellate Court.

Mr. Kulwant, in support of his contention, relied upon the judgment dated 22.09.2015 of this Court rendered in **RSA No.1445 of 2015 titled as Rishi Pal vs. The Gram Panchayat of village Sirsi and others**, wherein, by relying upon the judgment of the Hon'ble Supreme Court in **Malayalam Plantations Ltd. vs. State of Kerala and another 2011 AIR (SC) 559**, the judgment and decree of the lower Appellate Court has been set aside and the matter has been remanded back to the lower Appellate Court to decide the appeal afresh along with the application under Order 41 Rule 27 CPC.

Accordingly, the judgment and decree of the lower Appellate Court is hereby set aside and the matter is remanded back to the lower Appellate Court to decide the appeal afresh along with application moved under Order 41 Rule 27 CPC, in accordance with law, preferably within a period of six months from the date of receipt of certified copy of this order.

Parties through their counsel are directed to appear before the lower Appellate Court on 07.12.2015.

Accordingly, the appeal is allowed in the aforementioned terms.

November 17, 2015
savita

(AMIT RAWAL)
JUDGE