

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1598 of 2013(O&M)
Date of decision : November 20, 2015

Paramjit Sharma

..... Appellant

Versus

Punjab State Power Corpn.Ltd. And others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kushagra Mahajan, Advocate
for the appellant.

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

Amit Rawal, J (oral).

The appellant-plaintiff is in Regular Second Appeal against the dismissal of appeal vide judgment and decree of the lower appellate court dated 26.11.2012 whereby judgment and decree of the trial court dated 17.1.2011, was assailed.

Learned counsel for the appellant-plaintiff submits that after filing the application under Order 41 Rule 27 CPC in May 2011 other application for additional evidence dated 21.2.2011 was also filed. Copy thereof was supplied to the other side for filing reply. He further submits that the appeal has been decided without deciding the applications under Order 41 Rule 27 CPC. In support of his contentions he relies upon the judgment of the Hon'ble Supreme Court in **Malayalam Plantations Ltd. Vs. State of Kerala and another 2011 AIR (SC)559.**

I have gone through the record of the appellate court and find that the appellate court had issued notice of the aforementioned application under Order 41 Rule 27 CPC . The zimni order dated 17.5.2011 which reads thus:-

“Counsel for the appellant has filed an application under Order 41 Rule 27 CPC. Copy supplied . To come up on 28.7.2011 for reply/consideration of application as well as arguments in main appeal.”

From the perusal of the subsequent orders as well as impugned judgment and decree it reveals that the aforementioned applications have remained un-decided. In essence, it has not been adjudicated.

In view of the ratio decidendi culled out in **Malayalam Plantations Ltd.'s case (supra)** it was incumbent upon the lower appellate court to decide the application along with the appeal.

In view of the above, the impugned judgment and decree of the lower appellate court is set aside.

The matter is remitted back to the lower appellate court to decide the appeal afresh along with the applications aforementioned after giving due notice to the parties.

Accordingly, the appeal stands allowed.

(AMIT RAWAL)
JUDGE

November 20 , 2015
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