

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

RSA No.5868 of 2014 (O&M)

Date of decision : 22.09.2015

Captain Tarlok Singh and another

...Appellants

Versus

Shri Jarnail Singh and ors.

...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. H.K. Sharma, Advocate and
Mr. Satbir Rathore, Advocate for appellants.

AMIT RAWAL, J. (Oral)

Learned counsel for the appellants submits that when the appeal was pending before Additional District Judge, Jalandhar, on 19.04.2011, an application under order 41 Rule 27 of Code of Civil Procedure was filed. However, the appeal filed by the appellants has been decided without any decision on the said application and submits that in view of ratio decidendi culled out by this Court, the matter is liable to be remitted back as it is settled law that in case application under Order 41 Rule 27 of Code of Civil Procedure is not decided, the matter has to be remitted back.

I have seen zimni order of 19.04.2011, which read thus:-

“Present: Counsel for the parties.

*File put up before me as learned Presiding
Officer has been transferred. Substitute has not been*

provided so far. Now to come up on 01.06.2011 as per previous order. Application u/s 41 Rule 27 CPC _____ notice.

*Sd/- (J.P.S. Khurmi)
ADJ/19.04.2011(O)”*

Zimni order dated 01.06.2011, 19.07.2011 and 20.07.2011, be read thus:-

*“Present: Sh. H.K. Sharma, Counsel for the appellants.
Sh. O.P. Kangniwal, counsel for the respondent.
Received by transfer, it be checked and registered. For arguments adjourned to 19.07.2011.*

*Sd/- (Gurjant Singh)
ADJ/1.6.2011*

*Present: Sh. H.K. Sharma, Advocate counsel for the appellant.
Sh. O.P. Kangniwal, Advocate counsel for the respondent.
Arguments heard in part. For remaining arguments and order to come up on 20.07.2011.*

*Sd/- (Gurjant Singh)
Dt.19.07.2011 Additional District Judge,
Jalandhar*

*Present: Sh. H.K. Sharma, Advocate counsel for the appellants.
Sh. O.P. Kangniwal, Advocate counsel for respondent No.1.
Respondents No. 2 and 3 exparte.
Arguments heard. Vide my separate detailed judgment of even date, the appeal has been dismissed with costs. Decree sheet be drawn. Record of appeal be consigned. Record lower court be sent back immediately.*

*Pronounced: (Gurjant Singh)
Dt.20.07.2011 Additional District Judge,
Jalandhar”*

The subsequent zimni orders would reveal that there was no adjudication of the said application, much less, even the impugned judgment and decree does not mention about the same. In view of law laid down in *Hakam Singh Vs. State of Haryana & ors, 2008(4) RCR (Civil) 422*, impugned judgment and decree passed by the lower Appellate Court is set aside and the matter is remitted back to the lower Appellate Court, Jalandhar to decide the appeal afresh and it is further directed that Lower Appellate Court shall decide the application filed under Order 41 Rule 27 along with appeal, in essence, the appeal bearing No.18/10-RBT No.08/2011 is restored to its original number.

It is expected that Additional District Judge, Jalandhar/Lower Appellate Court shall decide the appeal as expeditiously as possible within a period of 8 months from the date of receipt of certified copy of the order.

Appeal stands disposed of.

Appellants through his counsel are directed to appear before lower Appellate Court on 05.10.2015 and endeavor would be made to serve respondents.

Appellants are at liberty to seek interim relief vis-a-vis execution of the judgment and decree of the trial Court.

CM Nos.1624-C, 1625-C of 2015, CM Nos.13961-C to 13965-C of 2014

In view of order passed in RSA No.5868 of 2014, aforementioned applications are rendered infructuous.

22.09.2015

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**(AMIT RAWAL)
JUDGE**