

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.92 of 2015**

1. Gaiind Lal son of Sukhram Sahu, aged about 55 years,
2. Janak Lal son of Sukh Ram Sahu, aged about 50 years,
3. Yuvraj son of Sukhram Sahu, aged about 50 years,

All appellants are resident of Village-Pond, Tahsil-Gariyaband,
District-Raipur (Now District-Gariyaband) (CG)

---Appellants

Versus

1. Premlal son of Manbodhi Kanwar, aged about 60 years,
resident of Village-Jenjra, now Village-Pond, Tahsil-
Gariyaband, District-District-Raipur (Now District-Gariyaband)
(CG)
2. State of Chhattisgarh, through the Collector, Raipur, District-
Raipur (Now District-Gariyaband) (CG)
3. Smt.Kiramin Bai wife of Amrit Lal Kanwar, aged about 35
years, resident of Village-Pond, Tahsil-Gariyaband, District-
Raipur (Now District-Gariyaband) (CG)

---Respondents

For Appellants	:	Mr. Gautam Khetrapal, Advocate
For Respondent No.1	:	Mr. B.P.Gupta and Ms Richa Jain, Advocates
For Respondent No.2	:	Ms Ashtha Shukla, P.L.
For Respondent No.3	:	Mr.Arjun Singroul, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

04/10/2016

1. The appeal has been admitted for hearing on 23.6.2016,
but no substantial question of law has been framed. The following

substantial question of law is framed for determination:-

“Whether the First Appellate Court is justified in making wholesale remand under Order 41 Rule 23-A of the CPC merely by granting applications under Order 41 Rule 27 of the CPC and Order 6 Rule 17 of the CPC ?

2. The suit filed by the plaintiff was dismissed by the trial Court on 30th September, 2010 recording a finding on all the issues in negative. Feeling aggrieved against that judgment and decree, the plaintiff preferred Civil Appeal No.23A/2010 before the First Appellate Court. During pendency of the first appeal, two applications one under Order 41 Rule 27 and another under Order 6 Rule 17 of the CPC were filed.

3. The First Appellate Court by its impugned judgment and decree has firstly considered two applications filed under Order 41 Rule 27 of the CPC and allowed the same and thereafter proceeded to consider the application under Order 6 Rule 17 of the CPC, which was held to be necessary, but actually it was not granted and thereafter, lastly in paragraph 33 of the impugned judgment and decree, the First Appellate Court held that the trial Court has not considered the oral and documentary evidence available on record in just and fair manner and suit has been decided on the basis of earlier judgment and decree dated 8.5.2001, which is not liable to be sustained and by granting those applications the suit has been remanded to the trial Court making open to the plaintiff to file

application filed for amendment of the suit, which has been challenged in this Misc.Appeal under Order 43 Rule 1(u) of the CPC.

4. Mr.Gautam Khetrapal, learned counsel appearing for the appellants, would submit that merely by granting applications under Order 41 Rule 27 of the CPC without reversing the decree in appeal and without holding that retrial is necessary and merely for re-appreciation of trial and/or documentary evidence, wholesale/open remand has been made under Order 41 Rule 23-A of the CPC, which is impermissible in law.

5. Mr.B.P.Gupta, learned counsel appearing for respondent No.1/plaintiff, would support the impugned decree and submit that the order passed by the First Appellate Court is in accordance with law as no illegality or irregularity has been committed warranting interference while exercising the limited jurisdiction under Order 43 Rule 1 (u) of the CPC.

6. Mr.Arjun Singroul, learned counsel has appeared on behalf of respondent No.3.

7. I have heard learned counsel appearing for the parties and considered their rival submissions made herein and also gone through the documents appended with the appeal with utmost circumspection.

8. Order 41 of the CPC provides for appeals from original decrees. The Code empowers the Appellate Court to order remand

in three situations. These three situations are covered by Order 41 Rule 23, Order 41 Rule 23-A and Order 41 Rule 25 of the CPC, which read as under:-

“23. Remand of case by appellate court.- Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases.- Where the court from whose decree an appeal is preferred has disposed of the case otherwise than on preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the appellate court shall have the same powers as it has under Rule 23.

25. Whether appellate court may frame issues and refer them for trial to court whose decree appealed from.- Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, appears to the appellate court essential to the right decision of the suit upon the merits, the appellate court may, if

necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred, and in such case shall direct such court to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the appellate court together with its findings thereon and the reasons therefor within such time as may be fixed by the appellate court or extended by it from time to time.”

9. Order 41 Rule 23 of the CPC is invocable by the Appellate Court where the appeal has arisen from the decree passed on a preliminary point; in other words, where the entire suit has been disposed of by the trial court on a preliminary point and such decree is reversed in appeal and the Appellate Court thinks proper to remand the case for fresh disposal. While doing so, the Appellate Court may issue further direction for trial of certain issues.

10. Order 41 Rule 23-A of the CPC has been inserted in the Code by Act 104 of 1976 w.e.f., 01.02.1977. According to Order 41 Rule 23-A of the CPC, the Appellate Court may remand the suit to the trial Court even though such suit has been disposed of on merits. It provides that where the trial court has disposed of the suit on merits and the decree is reversed in appeal and the Appellate Court considers that retrial is necessary, the Appellate Court may remand the suit to the trial Court. Thus, on twin conditions being satisfied, the Appellate Court can exercise the same power of remand under Order 41 Rule 23-A of the CPC.

11. In so far as Order 41 Rule 25 of the CPC is concerned, the Appellate Court continues to be in seisin of the matter; it calls upon the trial Court to record the finding on some issue or issues and to send that finding to the Appellate Court. The power under Order 41 Rule 25 is invoked by the Appellate Court, where it holds that the trial Court which passed the decree omitted to frame or try any issue or determine any question of fact essential to decide the matter finally. The Appellate Court, while remitting some issue or issues, may direct the trial Court to take additional evidence on such issue (s).

12. In a decision in P. Purushottam Reddy and another Vs. Pratap Steels Limited¹, the Supreme Court has held that unless the decree in appeal is reversed by the First Appellate Court and retrial is considered necessary, wholesale remand cannot be made by the First Appellate Court. It has been held as under:-

10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on

¹ (2002) 2 SCC 686

preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand in as much as the subordinate court can try only such issues as are referred to it for trial and having done so the evidence recorded together with findings and reasons therefore of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under Section 151 of the CPC to order a remand if such a remand was considered pre-eminently necessary *ex debito justitiae*, though not covered by any specific provision of Order 11 of the CPC. In cases where additional evidence is required to be taken in the event of any one of the clause of Sub-rule (1) of Rule 27 being attracted such additional evidence oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the

same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because as held in *Mahendra v. Sushila* (AIR 1965 SC 365 at p. 399), it is well settled that inherent powers can be availed of *ex debito justitiae* only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand *de hors* the Rules 23 and 23A. To wit the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 11 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore must be avoided.

11. In the case at hand, the trial court did not dispose of the suit upon a preliminary point. The suit was decided by recording findings on all the issues. By its appellate judgment under appeal herein, the High Court has recorded its finding on some of the issues, not preliminary, and then framed three additional issues leaving them to be tried and decided by the trial court. It is not a case where a retrial is considered

necessary. Neither Rule 23 nor Rule 23A of Order 41 applies. None of the conditions contemplated by Rule 21 exists so as to justify production of additional evidence by either party under that Rule. The validity of remand has to be tested by reference to Rule 25. So far as the objection as to maintainability of the suit for failure of the plaintiff to satisfy the requirement of Forms 47 and 48 of Appendix A of CPC is concerned, the High Court has itself found that there was no specific plea taken in the written statement. The question of framing an issue did not, therefore, arise. However, the plea was raised on behalf of the defendants purely as a question of law which, in their submission, strikes at the very root of the right of the plaintiff to maintain the suit in the form in which it was filed and so the plea was permitted to be urged. So far as the plea as to readiness and willingness by reference to clause (c) of Section 16 of the Specific Relief Act, 1963 is concerned, the pleadings are there as they were neither any of the parties made a prayer for amendment in the pleadings nor has the High Court allowed such a liberty. It is true that a specific issue was not framed by the trial court. Nevertheless the parties and the trial court were very much alive to the issue whether Section 16(c) of the Specific Relief Act was complied with or not and the contentions advanced by the parties in this regard were also adjudicated upon. The High Court was to examine whether such finding of the trial court was sustainable or not - in law and on facts. Even otherwise the question could have been gone into by the High Court and a finding could have been recorded on the

available material in as much as the High Court being the court of first appeal all the questions fact questions of fact and law arising in the case were open before it for consideration and decision.”

13. In a decision in Municipal Corporation, Hyderabad Vs. Sunder Singh², the Supreme Court, while considering the scope of Order 41 Rule 23, has held that the Court should be loathe to exercise its power under Order 41 Rule 23 of the CPC and an order of wholesale remand should not be passed routinely. It was held as under:-

“11. It is now well settled that before invoking the said provision, the conditions precedent laid down therein must be satisfied. It is further well settled that the Court should loathe to exercise its power in terms of Order XLI Rule 23 of the Code of Civil Procedure and an order of remand should not be passed routinely. It is not to be exercised by the appellate court only because it finds it difficult to deal with the entire matter. If it does not agree with the decision of the trial court, it has to come with a proper finding of its own. The Appellate Court cannot shirk its duties.”

14. In a decision in Ashwinkumar K. Patel Vs. Upendra J. Patel and others³, the Supreme Court has held that the Appellate Court should not ordinarily remand a case under Order 41 Rule 23 of the CPC, as such, remand orders lead to unnecessary delay and cause prejudice to the parties and Appellate Court should itself

² JT 2008(7) SC 247

³ AIR 1999 SC 1125

consider material available and should decide the appeal one way or other. It was held as under:-

"7. In our view, the High Court should not ordinarily remand a case under Order 41, Rule 23, C.P.C. to the lower Court merely because it considered that the reasoning of the lower Court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or other. It could have considered the various aspects of the case mentioned in the order of the trial Court and considered whether the order of the trial court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima-facie case on the material available. In matters involving agreements of 1980 (and 1996) on the one hand and an agreement of 1991 on the other, as in this case, such remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary."

15. Now keeping in view the twin requirements of Order 41 Rule 23-A of the CPC and law laid down by the Supreme Court in aforesaid cases, I proceed to examine the legality and correctness of the impugned judgment of the First Appellate Court, remanding the case to the trial court. In the present case, the trial Court has disposed of the suits on merits by deciding and recording findings on all the issues and not on the preliminary issue. The First Appellate

Court set-aside the judgment and decree of the trial Court and directed the trial Court to decide the suit afresh, after giving an opportunity to the parties to lead oral evidence as well as documentary evidence, as nature of order passed by Appellate Court leads no manner of doubt that such order has been passed by First Appellate Court in exercise of its power under Order 41 Rule 23-A of the CPC. Now the question to be considered is whether the First Appellate Court has reversed the decree in appeal and whether it is held that retrial is considered necessary.

16. Thus, it appears that the First Appellate Court did not consider the findings on all the issues recorded by the trial Court and considered only the application for additional evidence filed under Order 41 Rule 27 of the CPC, whereas the First Appellate Court was required to formulate points for determination under Order 41 Rule 31 of the CPC. Order 41 Rule 31 of the CPC provides as under:-

“31. Contents, date and signature of judgment.-The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points of determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

17. Order 41 Rule 31 of the CPC provides the procedure for deciding the appeal. The law requires substantial compliance of the said provision. The First Appellate Court being the final Court of facts has to formulate the points for determination and weigh the evidence on the issues, which arise for adjudication and record reasons for its decision on the said points. The first appeal is valuable right of the parties and parties have to be heard on the question of law and fact. The judgment of the First Appellate Court must therefore, reflect the conscious application of mind and record findings supported by the reasons on all the issues arising along with contentions put-forth and pressed by the parties for decision of the Appellate Court. In the instant case, the First Appellate Court neither framed the point for determination nor addressed all the issues arising along with contentions put forth and pressed by the parties for the decision of the Court and straight way considered the application under Order 41 Rule 27 of the CPC and by granting the application set aside the judgment and decree passed by the trial Court. Thus, the First Appellate Court has not reversed any of the findings recorded by the trial Court on any of the issues and simply remanded the suit for *de novo* consideration in exercise of power under Order 41 Rule 23-A of the CPC.

18. The matter did not stop here. The First Appellate Court neither considered nor recorded a finding that retrial is necessary which is one of the twin conditions for exercise of power under Order

41 Rule 23-A of the CPC. Thus, the impugned judgment and decree was passed without reversing the decree of trial Court, as one of the issues raised and decided by the trial Court has been reversed in appeal by the First Appellate Court and without holding retrial is necessary, the First Appellate Court has committed serious illegality in directing the wholesale and open remand in exercise of power under Order 41 Rule 23-A of the CPC.

19. So far as substantial question of law is concerned, the First Appellate Court has considered the application under Order 41 Rule 27 of the CPC and upon granting the said application set-aside the judgment and decree by directing the trial Court to give an opportunity to the respondent/plaintiff to adduce evidence.

20. The question is whether such a course of making wholesale and making open remand by granting application under Order 41 Rule 27 read with Section 151 of the CPC is permissible.

21. In the present case, the First Appellate Court has remanded the case to the trial Court merely by granting an application under Order 41 Rule 27 of the CPC, which the First Appellate Court itself can record the evidence and mark document, if any, as provided in Section 107 of the CPC. Section 107 of the CPC reads as under:-

“107. Power of Appellate Court.-(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.”

22. In a decision reported in Vasant Ganesh Damle Vs. Shrikant Trimbak Datar & another⁴, considering the scope of Section 107 of the CPC, the Supreme Court has held as under:-

“8. The appeal is considered to be an extension of the suit because under S. 107 of the Code of Civil Procedure, the appellate Court has the same powers as are conferred by the Code on Courts of original jurisdiction in respect of suits instituted therein. Such a power can be exercised by the appellate Court “as nearly as may be” exercised by the trial Court under the Code.”

23. In a decision in S. Umapathy Vs. Arunachalam Pattankattiar and another⁵, Justice P. Sathasivam, (as then His Lordship was), has held that mere reception of additional evidence cannot be a ground for order of remand and to try the suit once

⁴ AIR 2002 SC 1237

⁵ AIR 2000 Madras 259

again by the trial Court. The relevant portion of the said judgment is as under:-

“5. The first infirmity committed by the lower appellate Court is that there is no specific finding and reason for reception of additional documents at the appellate stage and the appellate Court failed to consider the claim of the appellants therein in terms of Order 41, Rule 27 (1) (aa) and (2), CPC. Another infirmity is that in spite of considering those documents, after satisfying the above-mentioned provision, viz. Order 41, Rule 27 (1) (aa) and (2), it is open to the lower appellate Court to consider the additional documents or additional evidence and record evidence and mark documents as mentioned in Order 41, Rule 27 (1), CPC. Here again, the lower appellate Court failed to follow the said procedure. In a matter like this, there should be always endeavour to dispose of the case by the appellate Court itself. When certain commissions and omissions made by the trial Court is brought to the notice of the appellate Court, the same should be corrected by the appellate Court.”

24. The trial Court after considering the pleas of the parties has framed five issues and answered all the issues in negative after considering oral and documentary evidence available on record. The First Appellate Court simply held that the trial Court has not appreciated the evidence of the plaintiff and the defendants in proper prospective and rendered a decision merely on the basis of

documentary evidence and set aside the impugned judgment and decree of the trial Court by granting an application under Order 41 Rule 27 of the CPC and remanded back the case to the trial Court.

25. Thus, keeping in view the aforesaid pronouncements, mere reception of the additional evidence, if any, by the First Appellate Court cannot be a ground for remanding the matter to the trial Court for *de novo* consideration. Thus, the substantial question of law is answered accordingly in affirmative and in favour of the appellants/defendants.

26. Thus, not only the impugned judgment and decree of the First Appellate Court suffers from infirmity, the order granting the application under Order 41 Rule 27 of the CPC also suffers from illegality for one or more reasons. Order 41 Rule 27 of the CPC provides as under:-

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be

produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to the produced, by an Appellate Court, the court shall record the reason for its admission.”

27. In a recent decision in Union of India vs. Ibrahim Uddin and another⁶, while dealing with an application under Order XLI Rule 27 of CPC, the Supreme Court held as under:-

“26. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

27. Under Order XLI , Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those

⁶ 2013 AIR SCW 2752

cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence. [Vide: Lala Pancham & Ors. (supra)].

28. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101).

29. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that

certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.”

28. In my considered opinion, the First Appellate Court has failed to consider and meet the twin requirements of Order 41 Rule 27 of the CPC as neither it has been held that for the purpose of pronouncing judgment fresh opportunity of adducing evidence is required to be granted to the respondent/plaintiff nor it has been held that the Appellate Court can not pass a satisfactory judgment and same comes 'within' the meaning of “for any substantial cause” as provided in Order 41 Rule 27 (b) of the CPC.

29. In the case in hand, the First Appellate Court granted two applications filed under Order 41 Rule 27 of the CPC and thereafter further finding that amendment of the plaint is necessary and further recorded a finding that oral evidence has not been considered properly and only on the basis of documentary evidence the suit has been decided to exercise the power under Order 41 Rule 23-A of the CPC as without reversing the decree in appeal and without holding that retrial is necessary. Such a course adopted by the First Appellate Court is absolutely impermissible in law. The First Appellate Court could have not remanded the case only by granting the applications filed under Order 41 Rule 27 of the CPC unless the decree passed by the trial Court and issues answered in negative are reversed in appeal by that Court and further held that retrial is

necessary. The First Appellate Court cannot shirk its responsibility by remanding the matter to the trial Court by granting that application and for re-appreciation of the material evidence.

30. Therefore, the impugned judgment and decree passed by the First Appellate Court in Civil Appeal No.23A/2010, making wholesale and open remand in exercise of its power under Order 41 Rule 23-A of the CPC, deserves to be and is accordingly set aside. The order of the First Appellate Court granting application under Order 41 Rule 27 also cannot be sustained and is hereby set aside.

31. Resultantly, the judgment and decree dated 2.1.2015 passed by the Additional District Judge, Gariyaband in Civil Appeal No.23A/2010 is hereby set aside. The aforesaid civil appeal is restored to the original file of the said Court for hearing and disposal in accordance with law keeping in view the provisions contained in Order 41 Rule 31 read with Order 20 Rule (4(2) of the CPC. The Appellate Court shall hear the civil appeal and while hearing, if it feels that the respondent No.1/plaintiff has made out a case for reception of additional evidence after rendering a specific finding, it shall record evidence and mark the documents and shall thereafter, considering the judgment and decree of the trial Court, dispose of the appeal one way or the other. The application under Order 41 Rule 27 of the CPC is also restored to its original number for fresh consideration and disposal in accordance with law. No order as to cost(s).

32. Considering the fact that Civil Suit was filed by respondent No.1/plaintiff on 7.2.2008, the First Appellate Court is directed to dispose of the civil appeal expeditiously preferably within a period of three months from the date of receipt of certified copy of this judgment. Parties are directed to appear before the First Appellate Court on **7th November, 2016**.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-