

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

CR No.1857 of 2016(O&M)

Date of decision:6.10.2016

Raj Rani and another

....Petitioners

VERSUS

Naranjan Singh through Daljit Kaur and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vijay Sharma, Advocate for the petitioners.

Mr. Sunil Garg, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 18.02.2016 passed by the Additional District Judge, Patiala whereby application dated 03.03.2015 (Annexure P-2) filed by respondent No.1/appellant for leading additional evidence at the appellate stage has been allowed.

The sole grievance of the petitioner is that as the application for adducing additional evidence filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (in short 'CPC') is to be decided while hearing the appeal on merits, the impugned order cannot be allowed to sustain and liable to be set aside. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India State of Rajasthan vs. T. Sahani, 2001(2) RCR (Civil) 419. Further reference has been made to judgment of this Court Smt. Surjit Kaur and another Vs. Bhupinder Singh Waraich, 2009(4) RCR (Civil) 563. In addition, it is argued that even the

Court of appeal in the impugned order has held that so far relevancy or irrelevancy of additional evidence is concerned, that is the subject matter of appeal and not of this application. It is further submitted that unless the Court holds that the additional evidence is relevant for complete and effective adjudication of the matter in controversy, application for additional evidence otherwise cannot be sustained.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that as the documents sought to be proved by way of additional evidence were not to the knowledge of the respondent/appellant as he was not a party to the litigation to which the documents pertain, he had no occasion to know about the documents at an earlier occasion and produce them at an appropriate stage of the proceedings before the trial Court. It is further argued that one of the documents even came into existence subsequent to decision by the trial Court.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

An application for additional evidence at an appellate stage is to be considered and decided by the Court while hearing the appeal on merits as the Appellate Court would be in a position to say if the additional evidence is necessary or otherwise for doing substantial justice as well as complete and effective adjudication of the matter in controversy only while appreciating merits of the appeal. Hon'ble the Supreme Court of India in State of Rajasthan's case (supra) has held that the application under Order 41 Rule 27 CPC should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if

not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view would be inappropriate.

Even in the case at hand, the Appellate Court without deciding the question of relevancy or irrelevancy of the additional evidence has decided the application without considering merits of the appeal. This apart, while deciding the question of additional evidence, it is incumbent upon the Court to examine and adjudicate that if a party is not permitted to adduce additional evidence what would be the adverse affect thereof. In the given facts and circumstances, the impugned order cannot be allowed to sustain and accordingly set aside.

However, it is made clear that the Court has not gone into the merits of the application under Order 41 Rule 27 CPC, kept open to be decided by the Appellate Court while deciding the appeal.

OCTOBER 6, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no