

Civil Revision No.4642 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4642 of 2015
Date of Decision: May 31st, 2016

Dr.Kuldip Jaiswal

...Petitioner

Versus

Smt.Dhan Devi & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Chetan Mittal, Senior Advocate with
Mr.Kunal Mulwani, Advocate,
for the petitioner.

Mr.P.S.Sobti, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order,
whereby the application filed under Order 41 Rule 27 CPC by the
respondent-defendants, has been allowed.

Mr.Chetan Mittal, learned Senior Counsel assisted by
Mr.Kunal Mulwani, Advocate for the petitioner submits that statutory

appeal by invoking the provisions of Section 96 of the Civil Procedure

Code against the judgment and decree dated 8.10.2002 of the trial Court had been filed, which is pending adjudication. He submits that when the matter was slated for arguments, the application, aforementioned, was filed and the same has been allowed in due haste and even the witnesses in this regard have been examined. He further submits that this exercise cannot be done in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Malayalam Plantations Ltd. Versus State of Kerala and another**, 2011 AIR (SC) 559, wherein it has been held that the additional evidence at appellate stage can be allowed at the time of hearing of the appeal on merits and not before that.

Mr.P.S.Sobti, learned counsel for the respondent-defendants, during the course of hearing, has passed on copies of the statements of the witnesses allowed to be examined in pursuance to the order under challenge and submits that the revision has been rendered infructuous. It is too late in a day to raise the aforementioned argument.

Mr.Mittal, in rebuttal, submits that the order under challenge is not sustainable as the Lower Appellate Court has not involved the provisions of Order 41 Rule 25 CPC and has assumed the role of trial Court.

I have heard the learned counsel for the parties and

appraised the paper book.

As per the ratio decidendi culled out in the judgment cited supra, the Hon'ble Supreme Court, after discussing the entire case law on this point, held as under:-

“If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.”

It is the conceded position on record that the appeal is stated to be pending adjudication. I am of the view that the Lower Appellate Court ought not to have undergone the exercise while allowing the application without hearing arguments in the pending appeal. Thus, the impugned order is totally in defiance to the guidelines laid down by the

Hon'ble Supreme Court in the judgment cited supra.

Accordingly, the impugned order is set-aside. Liberty is granted to the respondent-defendants to argue the application at the time of the hearing of the appeal as per the principles culled out in the judgment cited supra. The petitioner-plaintiff shall also be at liberty to raise all the pleas at the relevant stage.

Revision petition stands allowed in the aforementioned terms.

May 31st, 2016
ramesh

(AMIT RAWAL)
JUDGE