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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7553-2014

Date of decision : 09.05.2016

Bhulla Singh

... Petitioner

Versus

Gulzar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Ranjit Saini, Advocate
for the respondent.

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 petitioner-defendant is aggrieved of the dismissal of the application filed under Order 41 Rule 27 CPC seeking the leave of the lower Appellate Court to place on record the certified copy of the judgment passed in a civil suit for recovery of the amount titled as **“Chuhar Singh V/s Bhulla Singh”**.

Mr. Munish Gupta, learned counsel appearing on behalf of the petitioner-defendant submits that in view of the ratio decidendi culled in the judgment of Hon'ble Supreme Court rendered in **“Malayalam Plantations Ltd. V/s State of Kerala and another, 2011 AIR SC 559**, the application for additional evidence has to be decided along with the appeal. The appeal is still

pending for adjudication. He further submits that the evidence sought to be placed on record is essential and necessary for adjudication of the *lis* between the parties, thus, prays for setting aside of the impugned order, under challenge.

Mr. Ranjit Saini, learned counsel appearing on behalf of the respondent-plaintiff submits that there is no explanation of expressions “despite exercise of due diligence”. In case, the additional evidence is allowed, it will amount to de novo trial and filling up the lacuna in the evidence, which is not permissible in law, thus, urges this Court for affirming the findings rendered by the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the lower Appellate Court ought not to have adjudicated or pondered upon the decision of the application. It is a settled law that the application for additional evidence has to be decided along with the appeal. The appeal is still pending for adjudication.

In view of the foregoing reasons, the impugned order dated 29.08.2014, under challenge, is hereby set aside and the application under Order 41 Rule 27 CPC is revived. The lower Appellate Court is directed to decide the application along with the appeal.

Accordingly, the revision petition stands disposed of.

09.05.2016
yogesh

(AMIT RAWAL)
JUDGE