

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

**Regular Second Appeal No.4521 of 2010 (O&M)
Date of Decision: December 20, 2016.**

Smt. Prem Chaudhary

.....APPELLANT(s).

VERSUS

Takdir Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Kirpal Singh, Advocate
for the appellant (s).

Mr. Harkesh Manuja, Advocate
for the respondent.

SURINDER GUPTA, J.

Heard.

Before the first Appellate Court, appellant Prem Chaudhary had moved several applications, which include five applications for permission to lead additional evidence, out of which one application was decided vide order dated 25.03.2010 and the remaining applications remained undecided.

Learned counsel for the appellant has argued that appeal should be accepted on this short ground and matter be remanded to the first Appellate Court to decide the applications for additional evidence filed by the appellant and then the appeal, in accordance with law.

Not disputing the legal proposition that in the event of application for additional evidence remaining undecided before the First

Appellate Court, the case is to be remanded, learned counsel for respondent has argued that the application for additional evidence were dismissed as these were not pressed, as such, there is no ground to set aside the judgment of first Appellate Court on this score.

Perusal of first Appellate Court file shows that appellant filed first application seeking permission to lead additional evidence on 10.10.2002, second application on 25.07.2003, third on 01.10.2004 and fourth on 01.08.2007.

First Appellate Court observed in para 11 of the judgement that *“since the other applications of additional evidence have not been pressed, therefore, the applications have no force.”*

Thereafter, it started discussion on the applications and devoted about 10/11 pages of the judgement narrating the prayer made by the appellant and the reply of the respondent-defendant. Thereafter, in para 23 of the judgement, it again considered the law on the point of granting permission to lead additional evidence but refrained from recording any finding as to whether the applications were allowed or dismissed. In case, the applications for additional evidence had not been pressed before the first Appellate Court, there was no requirement to discuss the plea raised in those applications by the appellant and in the reply by respondent. The detailed discussion on these applications in the judgement shows that these applications were pressed before the first Appellate Court. This is why, learned first Appellate Court discussed these applications in detail along with law on the point. Such an inference can easily and safely be drawn from the judgement of the court below. Even in the grounds of appeal, the

appellant has assailed the judgement of the first Appellate Court on this account.

In view of the above facts, I find no reason to agree with the submission of the learned counsel for the respondent that the applications for additional evidence were not decided as these were not pressed before the first Appellate Court. As the applications for additional evidence moved by the appellant have remained undecided, this has caused prejudice to the appellant. Consequently, this appeal is accepted. Judgement and decree passed by the first Appellate Court is set aside and the matter is remanded to the first Appellate Court with direction to first decide the applications of the appellant seeking permission to lead additional evidence and then decide the appeal in accordance with law.

The parties are directed to appear before the first Appellate Court on 24.01.2017. The first Appellate Court will decide the applications within a period of 30 days thereafter. As the case is quite old, the first Appellate Court will decide the same expeditiously preferably within a period of 6 months.

December 20, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***