

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

Regular Second Appeal No.1798 of 2012 (O&M)

Date of decision: 9.5.2016

Sukhmander Singh and another

... Appellants

Versus

Mukand Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Navjot Singh Wahniwal, Advocate,
for the appellants.

Mr.J.S.Brar, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the dismissal of the appeal on the ground that two applications dated 10.8.2011 and 20.9.2011 invoking provisions of Order 41 Rule 27 of the Code of Civil Procedure while deciding the appeal have not been adjudicated.

Learned counsel for the appellants has drawn the attention of this Court to the zimni orders passed by the learned appellate court from 12.8.2011 to 21.9.2011. Mr.Brar does not dispute this fact.

I have heard the learned counsel for the parties and appraised the paper book. It is a well settled law that it is incumbent upon the lower appellate court to decide the application in case filed under Order 41 Rule 27 in the pending appeal is not adjudicated. In the absence of the decision,

the matter is required to be remanded back to the learned appellate court.

For the sake of brevity, zimni orders from 12.8.2011 to 28.9.2011 reads thus

: -

“Present : Sh.R.S.Wahniwal, Advocate counsel for the Appellant.

Shri Kartar Singh Brar, Advocate counsel for the respondent.

Ld. Counsel for the appellant has already moved application u/o 41 rule 27 read with section 151 CPC for allowing the certified copy of Rapat No.402 dated 27.04.2001 as additional evidence. Copy given to the opposite side today. For reply and consideration come up for 26.08.2011.

sd/-
(S.S.Panesar)
ADJ/Moga/12.08.2011

Present : Shri Vaneet Mittal, Advocate counsel for the appellant.

Shri K.S.Brar, Advocate counsel for the respondent.

Reply to the application under Order 41 Rule 27 read with section 151 CPC not filed. Adjournment prayed, which is allowed for 08.09.2011 for filing the reply to the above application.

sd/-
(S.S.Panesar)
ADJ/Moga/26.08.2011

Present : Counsel for the parties.

Reply filed. Copy given to the opposite side. Now to come upon 21.09.2011 for consideration on application under Order 41 rule 27 read with Section 151 CPC as well as arguments on main appeal.

sd/-
(S.S.Panesar)
ADJ/Moga/08.09.2011

Present : Shri Vaneet Mittal, Advocate counsel for the appellant.

Shri D.P.S.Khosa, Advocate counsel for the respondent.

Ld. counsel for the appellant has moved an application under order 41 rule 27 read with section 151 CPC for allowing the certified copy of Jamabandi for the year 1997-98, as additional evidence. Copy supplied to the opposite counsel. For reply and consideration to come up for 28.09.2011.

sd/-
(S.S.Panesar)
ADJ/Moga/21.09.2011

Present : Shri Vaneet Mittal, Advocate counsel for the appellant.

Shri K.S.Brar, Advocate counsel for the respondent.

Reply filed. Copy given to the opposite side. For

consideration on application under order 14 rule 5 read with section 151 CPC to come up for 30.09.2011.

sd/-
(S.S.Panesar)
ADJ/Moga/28.09.2011”

In view of the aforementioned submissions, the impugned judgment and decree of the lower appellate court is set aside and the matter is remanded back to the lower appellate court to decide the appeal along with the applications in view of the law laid down by Hon'ble Supreme Court of India in **Malayalam Plantations Limited v. State of Kerala and another**; 2011 AIR SC 559 in essence the appeal of the defendant is restored to its original number. It is expected that the lower appellate court shall decide the appeal as expeditiously as possible, preferably within a period of four months.

Parties through their counsel are directed to appear before the lower appellate court on 4.7.2016.

The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

May 9, 2016

Paritosh Kumar