

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

RSA No.827 of 2016 (O&M)

Date of decision:22.09.2016

Balbir Singh

Vs.

... Appellant

Dildar Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.S.Kathpal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.12823-C-2016

The application is allowed, subject to all just exceptions. Zimni orders, Annexure A-2 (Colly) are taken on record.

RSA No.827 of 2016 (O&M)

Learned counsel for the appellant submits that the application dated 29.09.2014 under Order 41 Rule 27 of Code of Civil Procedure (hereinafter referred to as "CPC") filed along with appeal before the Lower Appellate Court remained un-decided. The certified copies of the zimni orders have been placed on record which reflected that the same is part and parcel of the appeal and the Court had not taken cognizance of the same.

In support of his aforementioned contention, he relies upon the judgment of the Hon'ble Supreme Court rendered in **Malayalam Plantations Limited vs. State of Kerala and another 2011 AIR SC 559.**

Thus, it is evident that the application for additional evidence was filed along with appeal but the Court had taken cognizance of the appeal only.

In view of the aforementioned and in case the application filed under Order 41 Rule 27 CPC remained un-decided, I deem it appropriate to remand the matter back to the Lower Appellate Court with a direction to decide the appeal afresh along with an application for leading additional evidence.

With the aforementioned observations, the judgment and decree of the Lower Appellate Court is hereby set aside and the liberty is granted to the respondents to revive the same in case the averments made in the grounds of appeal, as well as, in the miscellaneous application for additional evidence are found to be incorrect.

I refrain myself from issuing notice of motion to other side/respondents to save the Court time and litigation expenses.

Accordingly, the Regular Second Appeal stands disposed of.

The parties are directed to appear before the Lower Appellate Court on 27.10.2016. The Additional District Judge shall ensure the presence of other party.

(AMIT RAWAL)
JUDGE

September 22, 2016

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No