

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

**Regular Second Appeal No.3209 of 2014 (O&M)
Date of Decision: August 31, 2016.**

Mahipal and others

.....APPELLANT(s).

VERSUS

Kuldeep Kataria and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ajay Jain, Advocate
for the appellant (s).

Mr. Sandeep Gupta, Advocate
for the respondents.

SURINDER GUPTA, J.

Heard.

It is admitted that an application seeking production of additional evidence dated 05.07.2013 was filed before the first Appellate Court, which was not decided before disposing of the appeal.

Counsel for the appellant while relying on the observations of Apex Court in cases of *Hakam Singh Vs. State of Haryana and others 2008(12) SCC 762; Malyalam Plantations Ltd Vs. State of Kerala and Anr. AIR 2011 Supreme Court 559* and judgment of this Court in *Ramesh Kumar and another Vs. Bhagwan Dass Devki Nandan Dharamshala and another 2012(2) PLR 534*, has argued that the matter be remanded back to the first Appellate Court to decide the appeal afresh after deciding the application.

Learned counsel for the respondents has argued that the application can be considered and decided by this Court and if evidence is required to be recorded, the file may be sent to first Appellate Court and report be called. He has also relied on the observations of Apex Court in case of ***A.A. Prakasan Vs. Anupama & Ors, 2016(5) J.T. 374.***

As the application for additional evidence has remained undecided before the first Appellate Court, it will be incumbent on the part of first Appellate Court to consider the same on merits. This was the view expressed by Apex Court in case of ***Hakam Singh Vs. State of Haryana and others (supra)*** and ***Malyalam Plantations Ltd Vs. State of Kerala and Anr.(supra)***. In the citation referred by learned counsel for the respondents, both the above citations were not referred.

Consequently, this appeal is accepted. Judgment of the first Appellate Court is set aside and file is remanded to the first Appellate Court. The parties are directed to appear before learned District Judge, Rewari on 19.09.2016. Learned District Judge will either keep the appeal on his file or entrust the same to any Court of competent jurisdiction. The appeal will be finally decided within three months of the receipt of the file.

August 31, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No