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

**Civil Revision No.4151 of 2016 (O&M)
Date of Decision: 16.08.2017**

JIWAN SINGH AND ANR.

.....Petitioners

Vs

GURDEEP SINGH

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ravi Malhotra, Advocate
for the petitioners.

Mr. Zorawar Singh Chauhan, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have assailed the order dated 05.05.2016 passed by the Addl. District Judge, Jalandhar vide which order dated 20.11.2013 passed by the Addl. Civil Judge (Sr. Divn.) Phillaur was set aside and the case was remanded to the trial Court for fresh hearing.

[2]. Perusal of the impugned order shows that the lower Appellate Court has remanded the case in toto to the trial Court for fresh decision by accepting both the applications filed under Order 41 Rule 17 CPC and Order 41 Rule 27 CPC. The lower

Appellate Court after accepting the application for additional evidence was required to follow the mode of taking additional evidence in view of Order 41 Rule 28 CPC, wherever, additional evidence is allowed to be produced at appellate stage, the Court may either take such evidence itself or direct the trial Court against whose decree the appeal is preferred, to take such evidence and sent a report to that effect to the appellate Court. Having not done so, in my considered opinion the lower Appellate Court has committed a wrong.

[3]. At this stage, without making any observation *qua* merits of the case, it would be just and appropriate to direct the lower Appellate Court to pass fresh order in terms of requirement of Order 41 Rule 28 CPC.

[4]. Consequently, impugned order dated 05.05.2016 is set aside and the case is remanded to the Addl. District Judge, Jalandhar to pass fresh order in view of observation made in the preceding paras.

[5]. Revision petition stands disposed of.

August 16, 2017

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No