

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

CR 4531 of 2017

Date of decision: 13.7.2017

Naseeb Kaur through L.Rs

Petitioners

vs.

Ujagar Singh and others

Respondents

Present: Ms. Promila Nain, Advocate.

M.M.S.BEDI,J.

Vide impugned order dated 20.2.2017, the application of the plaintiff- petitioner, who is appellant before the lower Appellate Court to decode her application under Order 41 Rule 27 CPC for examining an hand writing and finger print expert before hearing the appeal, has been dismissed observing that whether the application under Order 41 Rule 27 CPC is to be allowed, can be appreciated only during the course of arguments on merits and if the lower Appellate Court finds merit in the application under Order 41 Rule 27 CPC, then the decision on the main appeal can be withheld and the appellant can be allowed to produce additional evidence.

Counsel for the petitioner has contended that in case the application under Order 41 Rule 27 CPC, filed by the petitioner is allowed, no doubt time would be granted by the trial Court to produce additional evidence but in case the same is heard simultaneously with the main appeal and the same is dismissed, the only remedy to challenge the said order along with the second appeal would be available, as per the provisions of Order 43 Rule 1-A CPC and that an opportunity to file the

revision petition against the dismissal of the application under Order 41 Rule 27 CPC will not be available and the petitioner will be deprived of the right to file the revision petition.

I have heard counsel for the petitioner and I am of the opinion that there is no illegality in the observation made by the lower Appellate Court that the application under Order 41 Rule 27 CPC can be fairly appreciated only during the adjudication of the main appeal. This Court is of the opinion that the rights of the petitioner can be safe-guarded by making an observation that while considering the application under Order 41 Rule 27 CPC along with the main appeal on merits, if the lower Appellate Court forms an opinion that the application under Order 41 Rule 27 CPC deserves to be dismissed, the decision in the main appeal would be deferred for a period of atleast ten days.

The above said observation will not be deemed to have conferred any right on the petitioner ipso facto to file a revision petition in case of dismissal of the application under Order 41 Rule 27 CPC.

Disposed of in the above terms.

July 13 ,2017
TSM

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether Reportable

Yes/ No