

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

RSA No.693 of 2016 (O&M).

Date of Decision: 02.02.2017.

Gurbachan Singh

....Appellant.

VERSUS

Parveen Sood and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. G.S. Benipal, Advocate for the appellant.

Ms. Seema Arora, Advocate for respondent No.1.

SNEH PRASHAR, J.

CM-605-C-2017

This is an application under Section 151 of the Civil Procedure Code (for short, "CPC") filed by respondent No.1 for deciding the appeal in view of the settled law that the appellate Court was duty bound to decide the application under Order XLI Rule 27 CPC before or at the time of deciding the main appeal.

In view of the averments made in the application, the main appeal is taken up for decision today itself and the application application stands allowed.

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Assailing the judgment and decree dated 09.11.2015 passed by learned Additional District Judge, Patiala vide which the appeal filed by appellant-plaintiff was dismissed and the judgment and decree dated

08.07.2014 passed by learned Civil Judge (Junior Division), Patiala was upheld, the instant regular second appeal was filed.

At the very outset, learned counsel for respondent No.1 submits that as observed by this Court in order dated 11.01.2017, the appellant had moved an application under Order XLI Rule 27 CPC seeking permission to lead additional evidence before the first appellate Court, which remained pending and was not considered and decided alongwith the appeal by learned first appellate Court. With all fairness conceding that the application ought to have been decided by learned first appellate Court, learned counsel submits that she has no objection if the judgment and decree dated 09.11.2015 passed by learned first appellate Court is set aside and the matter is remitted back to the first appellate Court for deciding the application for additional evidence filed by the appellant as well as the appeal afresh.

Considering the submission made by learned counsel for respondent No.1, which in fact is the prayer of counsel for the appellant as well, the judgment and decree dated 09.11.2015 passed by learned first appellate Court is set aside. The case is remitted back to the first appellate Court for deciding the application for additional evidence filed by the appellant and also for decision of the appeal afresh.

Parties through their counsel are directed to appear before the concerned first appellate Court on 23.02.2017.

(SNEH PRASHAR)
JUDGE

02.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**
Whether Reportable : **Yes/ No**