

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

CR No.165 of 2018 (O&M)  
Date of Decision : 09.02.2018.

Sunder Lal.

... Petitioner

Versus

Dr. Arun Kumar Goyal.

... Respondent

**CORAM : HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. Sanjiv Gupta, Advocate  
for the petitioner.

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**B.S.WALIA, J.,**

**CR No.2801-CII of 2018**

For the reasons mentioned in the application, the same is allowed subject to all just exceptions.

**CR No.165 of 2018 (O&M)**

1. Learned counsel for the petitioner contends that the controversy involved in this petition i.e. whether an order on appeal without decision of the application under Order 41 Rule 27 of the Code of Civil Procedure is legally sustainable is no longer res integra in view of law laid down by the Hon'ble Supreme Court in **Malayalam Plantations Ltd. Versus State of Kerala & anr-2010 (13) SCC 487**. Learned counsel contends that in the **circumstances**, the impugned order is liable to be set aside.

2. Relevant extract of the decision of the Hon'ble Supreme Court in Malayalam's case (supra) is reproduced as under :-

10) In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 of CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in Jatinder Singh & Anr. Vs. Mehar Singh & Ors. AIR 2009 SC 354 and Shyam Gopal Bindal and Others vs. Land Acquisition Officer and Another, (2010) 2 SCC 316.

14) For the reasons aforesaid, the impugned judgment of the High Court is set aside. We make it clear that we have not gone into the merits as to whether application for reception of additional evidence under Order 41 Rule 27 of the CPC should be allowed or not, which shall be decided by the High Court in accordance with law. We also make it clear that we have not gone into the merits of the claim made by both parties except the reasons indicated in the earlier paragraphs. Considering the facts and circumstances of the case, more particularly, the issue is pending from 1975, we request the High Court to restore MFA No. 537 of 1995 and Cross Appeal on its file and dispose of the same at an early date preferably within a period of six months from the date of receipt of copy of this judgment. Civil Appeals are allowed to the extent indicated above, however, with no order as to costs.

3. Notice of motion. Mr. Sandeep K. Sharma, Advocate, who is present in Court, accepts notice on behalf of the respondent/caveator and filed power of attorney on behalf of the respondent. The same is taken on record.

4. With the consent of learned counsel for the parties, the case is taken up for final disposal.

5. Learned counsel for the respondent has not been able to distinguish the applicability of the law laid down in the aforementioned decision of the Hon'ble Supreme Court. In the circumstances, the plea of learned counsel for the petitioner merits acceptance.

6. Accordingly, in view of the decision of the Hon’ble Supreme Court as referred to above, the judgment of the learned Appellate Authority is set aside. The matter is remanded to the learned Appellate Authority with a direction to first decide the application under Order 41 Rule 27, Code of Civil Procedure and the appeal on merits thereafter in accordance with law as early as possible, preferably within 6 months from the date of appearance before the Appellate Authority.
7. Parties through respective learned counsel are directed to put in appearance before the learned Appellate Authority on 09.03.2018. Revision petition allowed in above terms.

**(B.S.WALIA)**  
**JUDGE**

**09.02.2018**  
rajesh.k.khurana

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|---------------------------|----------|
| Whether speaking/reasoned | : Yes/No |
| Whether reportable        | : Yes/No |