

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

CR No.6078 of 2017
Date of decision : 09.03.2018

Chand Singh

...Petitioner

Versus

Ram Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.P.S. Ishar, Advocate for the petitioner.

Mr. R.K. Shukla, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

At the outset, learned counsel for respondent No.1 has objected to the maintainability of the revision petition on the ground that the first appeal has been dismissed and only the Regular Second Appeal is maintainable.

Learned counsel for the petitioner prays that both the judgments have been impugned in the present revision petition and, therefore, this revision petition be treated as appeal to avoid any technical objection.

In the considered opinion of this Court, technicalities should not come in the way of the disposal of the cases. Hence, this revision petition is treated as a Regular Second Appeal.

The petitioner, during the pendency of the suit, filed an application under Order 1 Rule 10 CPC for being added as a party

defendant, which was dismissed. He filed a revision petition in this Court. During the pendency of the revision petition, the suit was decided. The petitioner withdrew the revision petition to press the plea with regard to the non-impleadment before the District Judge, where the appeal filed by the petitioner was already pending.

Learned First Appellate Court has dismissed the appeal as not maintainable on the ground that he was not the party to the suit. Learned Court has overlooked the fact that the application for impleading the party was filed, when the suit was pending, dismissed by the trial Court and the revision petition was pending, when the suit was finally decided.

In such circumstances, the First Appellate Court committed an error in refusing to adjudicate upon the first appeal without opining on the order passed by the trial Court dismissing the application under Order 1 Rule 10 CPC.

Any party who is aggrieved of a judgment and decree can be permitted to file the appeal with the leave of the Court. Here is a case where the application was filed under Order 1 Rule 10 CPC, during the pendency of the suit. The Court was required to adjudicate upon whether the petitioner-appellant was a necessary party or not. It is admitted by the learned counsel for the parties that the learned First Appellate Court has not adjudicated upon the validity of the order passed by the trial Court dismissing the application filed under Order 1 Rule 10 CPC.

In view thereof, the order under challenge is set aside.

Learned First Appellate Court is directed to first adjudicate upon the correctness of the order passed, dismissing the application filed

under Order 1 Rule 10 CPC and, thereafter proceed with the case.

Parties through their counsel are directed to appear before the First Appellate Court on 17.04.2018.

In view of the above, the present appeal is allowed.

09.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No