

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

RSA No.437 of 1991 (O&M)

Date of decision : 14.02.2018

Shivala Damodar Dass

...Appellant

Versus

M/s Sarvjit Workshop Cooperative Industrial Society Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amarjit Markan, Advocate for the appellant.

Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court dated 13.12.1990.

A reading of the judgment passed by the First Appellate Court shows that the learned First Appellate Court after allowing the application for additional evidence, dismissed the appeal primarily on the ground that the receiver appointed is not pursuing the appeal and the appellant who claims to be the President of the Shivala Damodar Dass, cannot pursue the appeal.

The present appeal has been filed by Shivala Damodar Dass through receiver. It is the assertion of the appellant that before passing the

order, the First Appellate Court did not give any notice to the receiver or grant opportunity to the receiver to prosecute the appeal.

On the other hand, learned counsel for the respondents has vehemently argued that once the plaintiff-respondent has been held to be a tenant under the Shivala Damodar Dass, hence the earlier judgment passed by the Court on 05.02.1983 affirmed in appeal dated 30.05.1984 would not be binding on it.

Be that as it may. Once, the First Appellate Court has primarily dismissed the appeal on the ground that since the receiver is not prosecuting the appeal and the alleged President has no right to pursue the appeal, therefore, the learned First Appellate Court ought to have granted opportunity to the receiver to pursue the appeal. The First Appellate Court ought to have issued a notice to the receiver. Although, learned counsel for the respondents has vehemently argued that certain observations have been made by the First Appellate Court which also amount to the decision on merits, however First Appellate Court being last Court for appreciation of the evidence, it was mandatory for the First Appellate Court to discuss the evidence available on the file and return findings on all the issues. Issue No.4 is with respect to res judicata which has not been even referred to by the First Appellate Court.

In view thereof, judgment under appeal is set aside. The case is remitted to the learned First Appellate Court to re-decide the appeal in accordance with law after granting opportunity to the parties to address the arguments.

Parties through their counsel are requested to appear before the

First Appellate Court on 19.03.2018.

The First Appellate Court is requested to make sincere endeavour to decide the appeal within a period of three months from the date of receipt of certified copy of the order.

In view of the above, the present Regular Second Appeal is disposed of.

14.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No