

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

Crl. Revision No. 3037 of 2015 (O&M)

Date of Decision: 11.09.2018

Shri Bhagwan

.. Petitioner

Vs.

Suman Devi

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Jagjeet Beniwal, Advocate
for the petitioner.**

**Mr. Balraj Gujjar, Advocate
for the respondent.**

ANITA CHAUDHRY, J.

The instant revision petition has been preferred by the husband against the judgment dated 20.07.2015 vide which the appeal filed by the respondent-wife challenging the dismissal of her application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 by the learned Magistrate vide order dated 04.03.2015, has been accepted and the order of the Magistrate was set aside and the matter was remanded to the trial Court for decision afresh on merits as per law.

The marriage of petitioner was solemnized with respondent in the year 1993 and three children were born. The wife filed an application in the year 2013 under Section 12 of the D.V. Act claiming domestic violence by the husband. She claimed right of residence, apart from compensation and monetary relief from the husband. The parties led the evidence and on appraisal thereof, the trial Magistrate dismissed the application vide order dated 04.03.2015 and observed that the wife had failed to prove any

domestic violence; she was not turned out of the house and she herself stepped out therefrom of her own and that the allegation of beating the children by the husband remained unproved as they (children) were not examined.

The wife preferred an appeal. The Appellate Court below accepted the same and remanded the matter to the trial Court for decision afresh vide the impugned order.

Dis-satisfied therewith, the husband has filed the instant revision petition.

I have heard learned counsel for the parties and have perused the paper-book carefully.

At the outset this Court would refrain from adverting to the submissions made at bar by the learned counsel for the parties touching the merits of the case and am of the considered view that the approach adopted by the Appellate Court below in remanding the matter to the trial Court was erroneous. The Appellate Court below, in the impugned order, while referring to certain omissions by the trial Magistrate in evaluating the facts and evidence on record, concluded that the same were not taken into consideration while dismissing the application of the wife and remanded the matter. The principles underlying the exercise of the power of remand by the Appellate Court were not properly applied or exercised by the lower Appellate Court. It is settled that only in exceptional cases where the judgment of the trial Court is wholly unintelligible or incomprehensible, the Appellate Court can remand the matter for fresh disposal. If any mistake had crept in in the order of the trial court, the same can be rectified by the Appellate Court itself, unless there are very compelling circumstances to

make an order of remand. An order of remand should not be taken to be matter of course and the power of remand should be sparingly exercised. There should always be endeavour to dispose of the case by the Appellate Court itself, when the commissions and omissions made by the first Court could be corrected by the Appellate Court. If the Appellate Court was of the view that there was omission in evaluating the facts and evidence on record, it was within the domain of the Appellate Court to itself ascertain the same. If it did not agree with the decision of the trial court, it had to come with a proper finding of its own. The Appellate court cannot shirk its duties. It is also settled that some defects or infirmities in the reasoning of the trial court is not a ground for the Appellate court to remand the same to the trial court. The Appellate Court should come to the clear conclusion that the findings of the trial court cannot be supported and must be set aside. A reading of the judgment of the Appellate Court would show that it has nowhere stated that the judgment of the trial court is vitiated.

For the reasons above, the revision petition is allowed. Impugned order dated 20.07.2015 passed by the Appellate Court is set aside. The Appellate Court below shall restore the main appeal filed by the wife and decide the same on merits, in accordance with law after hearing the parties.

The parties are directed to appear before the Appellate Court on 03.10.2018.

September 11, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No