

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 2886 of 2015
Date of decision : February 14, 2018

M/s Shivraj Wires Ltd.

....Appellant

versus

State of Punjab, Rust, Ludhiana and others

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. PS Guliani, Advocate, for the appellant

Mr. BS Sewak, Addl. Advocate General, Punjab
for the respondents

Fateh Deep Singh, J. (Oral)

The short point raised by the counsel for the appellant is that in spite of the fact that an application under Order XLI Rule 27 of the Code of Civil Procedure for leading additional evidence was moved with the appeal, the learned first appellate court never considered the same nor any order has been passed thereon resulting in miscarriage of justice to the cause of the appellant. Mr. Sewak on behalf of the respondents readily accepts this fact which is well elicited from the records of the learned first appellate court where at the very onset along with appeal, an application under Order XLI Rule 27 of the Code of Civil Procedure was moved for leading

additional evidence on 24.1.2013 but as is there and apparently as a consequence of inadvertent error on the part of the learned court below failed to note that along with appeal certain application too has been filed and therefore, never processed the same and has certainly caused immense prejudice to the cause of the appellant thereby jeopardizing case of the appellant on account of it. Non-consideration of this application and which fact certainly could not be controverted by the State counsel, in the light of this prejudice and irregularity which has gone to the roots of the case has undermined the findings so arrived by virtue of judgment and decree dated 12.5.2014 affecting dispensation of justice.

In the light of the aforesaid, the present appeal is allowed to that limited extent and judgment and decree dated 12.5.2014 passed by learned Additional District Judge, Ludhiana are set aside. The matter is ordered to be remanded back to the first appellate court to hear and decide the matter afresh in accordance with law.

Keeping in view the inordinate delay necessitates issuance of directions to the court below to ensure speedy disposal of the matter.

February 14, 2018
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No