

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1660 of 2014 (O&M)
Date of decision : August 30, 2018

Surender Chauhan

..... Appellant

Versus

Shis Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Suman Jain, Advocate
for the appellant.

Mr. Ashok Kaushik, Advocate
for the respondent.

AMIT RAWAL, J (oral).

Challenge in the present appeal is to the impugned judgments and decrees of both the courts below whereby suit of the appellant-plaintiff has been dismissed.

Mr. Suman Jain, learned counsel appearing on behalf of the appellant submit that the judgment and decree of the trial Court was assailed by filing an appeal, under Section 96 of the Code of Civil Procedure, along with same an application, under Order 41 Rule 27 CPC, seeking indulgence of the lower Appellate Court for placing on record certain documents, as noticed, was also filed. The lower Appellate Court without deciding the said application, has decided the appeal. In support of the contention, relied upon the judgment of the Hon'ble Supreme Court in **Malayalam Plantations Ltd. vs. State of Kerala and another 2011 AIR (SC) 559.**

Mr. Ashok Kaushik, learned counsel appearing on behalf

of the respondent submits that it is a matter of record that application under

Order 41 Rule 27 of Code of Civil Procedure was filed and the same has not been decided. He further submits that appellant-defendant is adopting dilatory tactics and in case the matter is required to be remanded back, the lower Appellate Court may be directed to dispose of appeal within the time frame.

I have heard learned counsel for parties and gone through the zimni orders from the date when the appeal was instituted till the adjudication of the same, there is no reference, that lower Appellate Court decided the application separately. The ratio decidendi culled out by Hon'ble Supreme Court in Malayalam Plantations Ltd.'s case (supra) is squarely applicable to the facts and circumstances of the case. The lower Appellate Court being last Court of fact and law, is enjoined upon obligation to decide the application, filed along with or during pendency of the appeal. The manner and mode in which the appeal has been disposed of without deciding the application in my view reflects non-application of mind.

In view of what has been observed above, the present appeal is allowed. Impugned judgment and decree dated 6.12.2013 of the lower Appellate Court is set aside and matter is remanded to the lower Appellate Court, in essence, appeal bearing No. 78 dated 29.8.2012/7.9.2013 is restored to its original number. `

Parties through their counsel are directed to appear before the lower Appellate Court on 8.10.2018.

It is directed that Lower Appellate Court shall decide the appeal along with the application for additional evidence in accordance with law preferably within a period of eight months from the date of receipt of

certified copy of this order.

Record of the Courts below be also sent back.

(AMIT RAWAL)
JUDGE

August 30, 2018
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No