

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

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RSA No.4030 of 2017 (O & M)
Date of Decision:05.04.2018

Kashmiri Lal

...Appellant

Versus

Sunil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Jain, Advocate
for the appellant.

Mr. Ashok Giri, Advocate
for respondent Nos.1 to 8.

ANIL KSHETARPAL, J.(Oral)

CM No.10292-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 57 days in re-filing the appeal is condoned.

Application is allowed.

Main Case

It is admitted position between the learned counsel for the parties that the application for additional evidence filed under Order 41 Rule 27 of the Code of Civil Procedure dated 27.07.2016 has not been decided by the learned First Appellate Court while deciding the appeal. First appeal is a valuable right available to a party to the litigation. Learned First Appellate Court is last Court for re-appreciation of evidence.

In view thereof, the judgment under appeal is set aside. Case is

remitted back to the learned First Appellate Court to first decide the application for additional evidence dated 27.07.2016.

Learned counsel for the appellant has also pointed out that this Court on a previous occasion vide order dated 21.09.2016 had directed the learned trial Court to submit a report after recording evidence and the learned First Appellate Court has not granted opportunity to the parties in terms of Order 41 Rule 26 of the Code of Civil Procedure to file objections.

Needless to say that the learned First Appellate Court would keep in mind the provisions of Order 41 Rule 26 of the Code of Civil Procedure before finally deciding the appeal as well as application for additional evidence.

Learned First Appellate Court is requested to decide the appeal within a period of 6 months from the date of receipt of certified copy of the order.

Regular second appeal is disposed of.

05.04.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No