

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

206

CR No.6180 of 2015

Date of Decision : 04.09.2019

Gurdeep Singh (deceased) through his LRs

....Petitioners

v/s

Mahan Singh and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. G.S. Punia, Senior Advocate with Ms. Harveen Kaur, Advocate for the petitioners.

Mr. Ajay Pal Singh, Advocate for Mr. A.S. Sibia, Advocate for respondent No.1.

Mr. Ashwani Gaur, Advocate for respondent No.6.

Mr. Munish Kumar Garg, Advocate for respondent No.7.

B.S. Walia, J. (Oral),.

[1] Prayer in the revision petition under Article 227 of the Constitution of India is for setting aside order, Annexure P/1, dated 11.08.2015, passed by the learned Additional District Judge, Sri Muktsar Sahib, dismissing the petitioners application for additional evidence under Order 41 Rule 27 CPC.

[2] Brief facts of the case, leading to the revision petition are that an application under Order 41 Rule 27 CPC was filed for leading additional evidence along with the appeal filed by the petitioner before the learned Additional District Judge, Sri Muktsar Sahib, against the judgment and decree, Annexure P/2, dated 13.03.2012. Learned Counsel contends that the impugned order is unsustainable as the application for leading additional evidence was

decided at a stage prior to the stage of deciding the appeal in derogation of the decision in '**Municipal Committee, Ellenabad** versus **Shanti Devi**', 2003(1) PLR 456 and '**Gurnam Singh** versus **Saudagar Singh and others**', 2005(2) RCR (Civil) 547. Learned counsel has also referred to a decision of the Supreme Court in '**State of Rajasthan** versus **T. Sahani**', 2001(10) SCC 619. Relevant extract of the aforementioned judgments are reproduced as under :-

'Municipal Committee, Ellenabad versus **Shanti Devi**', 2003(1) PLR 456

"3. Having heard the learned counsel for the parties, I am of the considered opinion that the order passed by the Addl. District Judge suffers from serious illegality in as much as the application under Order 41 Rule 27 of the Code is required to be decided along with the appeal. On the interpretation of Order 41 Rule 27(c) of the Code it appears to be well settled that the appellate Court should decide the application at the stage of deciding the appeal because it is only at that stage that the necessity of referring to some additional facts on the basis of the additional evidence can be appreciated. This view is supported by a Judgment of the Supreme Court in the case of [State of Rajasthan v. T.N. Sahani](#), 2001(2) RCR (Civil) 419 (SC) : 2001(1) PLJ 524). The observations of the Supreme Court interpreting the provisions of Order 41 Rule 27 of the Code reads as under:

"It may be pointed out that this Court, as long back as in 1963 in [K. Venkataramiah v. Seetharama Reddy](#), A.I.R. 1963 Supreme Court 1526, pointed out the scope of un amended provision of Order 41 Rule 27(c) that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of record as it was, and so, it could not require additional evidence to enable it to

pronounce the judgment. It still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the Court to consider, at the time of hearing of the appeal on merits, whether the documents which are sought to be filed as additional evidence, need to be looked into to pronounce its judgment, in a more satisfactory manner. If that be so, it is always open to the Court to look into the documents and for that purpose, amended provision of Order 41 Rule 27(b), CPC can be invoked. So the application under Order 41 Rule 27(b) should have been decided along with the appeal. Had the Court found the document necessary to pronounce the judgment in the appeal in a more satisfactory manner, it would have allowed the same, if not the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate....."

'State of Rajasthan versus T. Sahani', 2001(10) SCC 619

"4. It may be pointed out that this Court as long back as in 1963 in [K. Venkataramiah v. Seetharama Reddy](#) AIR 1963 SC 1526 pointed out the scope of un amended provision of Order 41, Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked.

So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.”

[3] Learned counsel for the respondent has not been able to controvert the aforementioned position. In the light of the position as noted above, impugned order, Annexure P/1, dated 11.08.2015, passed by the learned Additional District Judge, Sri Muktsar Sahib, dismissing the application of the petitioner for leading additional evidence Order 41 Rule 27 CPC is set aside. The matter is remanded to the learned Additional District Judge, Sri Muktsar Sahib to decide the application under Order 41 Rule 27 CPC, while deciding the main appeal in view of the decision of Hon’ble the Supreme Court in ‘**T. Sahani’s** case (supra).

[4] Revision petition allowed in aforementioned terms..

(B.S. Walia)
Judge

September 04, 2019
‘Rajneesh’

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No