

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2289 of 2016 (O&M)

Date of decision:17.05.2019

Baldev Singh and another

... Appellants

Vs.

The Kachhwa Scheduled Caste Land Owners
Co-operative Society Limited Kachhwa

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Saurabh Arora, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Mr.Saurabh Arora, learned counsel for the appellants submitted that the judgment and decree of the trial Court was assailed by filing an appeal, under Section 96 of the Code of Civil Procedure. Alongwith appeal an application, under Order 41 Rule 27 CPC, seeking indulgence of the lower Appellate Court for placing on record certain documents, 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.**

I have heard learned counsel for the appellants 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 the Lower Appellate

Court decided the application separately. Even on perusal of the impugned judgment and decree, it is revealed that there is no reference to the application. According to the learned counsel for the appellants, the documents sought to be placed on record, by way of additional evidence, were/are essential and necessary for adjudication of the appeal.

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in Malayam Plantations Ltd.'s case (supra), the impugned judgment and decree is not sustainable and the matter is liable to be remanded back. Accordingly, the impugned judgment and decree of the lower Appellate Court is hereby set aside and the matter is remanded back to it, in essence, the appeal is restored to its original number. The Lower Appellate Court is directed to decide the appeal alongwith an application filed under Order 41 Rule 27 CPC, in accordance with law as expeditiously as possible.

It would be farcical exercise in calling upon the opposite party, as record, noticed above, reveals non-adjudication of the application.

The appeal is disposed of, in the aforementioned terms.

(AMIT RAWAL)
JUDGE

May 17, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No