

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

RSA No.258 of 2016 (O&M)

Date of decision : 10.01.2019

Jagdish

...Appellant

Versus

Sundu and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. O.P. Goyal, Sr. Advocate with
Mr. Piyush Aggarwal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

On 28.09.2016, this Court had issued notice of motion while noticing the contention of the learned Senior Counsel. Order dated 28.09.2016 passed by this Court reads as under:-

“By relying upon the application under Order 41 Rule 27 CPC filed before the lower Appellate Court for leading additional evidence, learned senior counsel for the appellant, inter alia, states that neither the application was decided separately nor along with the appeal, despite the fact that the same was duly replied by the plaintiffs-respondents before the lower Appellate Court.

Notice of motion for 14.12.2016.

Notice Re; stay as well.

Let photocopy of the record of the Courts below be requisitioned for the date fixed. ”

Record of the First Appellate Court has been examined. It is apparent from the record that on 21.04.2015, an application under Order 41 Rule 27 CPC was filed and notice of the application was given to the

respondent. On 14.05.2015, reply to the application was filed and thereafter case was adjourned to 16.07.2015 and thereafter to 27.07.2015 for consideration on the application filed under Order 41 Rule 27 of Code of Civil Procedure. On 27.07.2015, the case was adjourned to 11.08.2015. On 11.08.2015, appeal has been decided.

Learned counsel for the appellant has contended that an application for additional evidence has neither been decided by separate order nor through the impugned judgment.

Keeping in view this fact, the judgment passed by the learned First Appellate Court is erroneous and hence, set aside.

Accordingly, the present Regular Second Appeal is accepted.

The case is remitted back to the First Appellate Court to decide the appeal after deciding the fate of pending application filed under Order 41 Rule 27 of Code of Civil Procedure.

Appellant through his counsel is directed to appear before the First Appellate Court on 28.01.2019.

The First Appellate Court would issue notice to the respondents before deciding the appeal.

10.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No