

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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**RSA-686-2016 &
CM-1869-C-2016 &
CM-1870-C-2016 &
CM-15836-C-2019**

Date of decision: 13.12.2019

V.K. GOSWAMI (NOW DECEASED) THROUGH HIS LRS
...PETITIONER
V/S

PUNJAB SMALL INDUSTRIES & EXPORT CORPORATION LTD
..RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gurbachan Singh Bhatia, Advocate,
for the applicant/appellants.

Mr. Shashi Kumar Yadav, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-15836-C-2019

Prayer in this application is for amendment of the grounds of appeal as the counsel for the non-applicant/respondent has initially taken a plea that in the grounds of appeal, which have been preferred by the applicant-appellant, the plea with regard to the application under Order 41 Rule 27 CPC for leading additional evidence having not been decided and the same was pending, was not so mentioned.

It is contended by the counsel for the applicant-appellant that to obviate the said objection, as has been raised by the counsel for the respondent, the present application has been filed for amendment of the grounds of appeal although it is not necessary in the light of the fact that it is a legal issue which can be raised at any time as the facts are apparent

from the records of the Lower Appellate Court.

Notice of the application was issued to the counsel for the non-applicant/respondent, who has objected to the application by asserting that the present application be not allowed in the light of the fact that initially when the appeal was filed by the applicant/appellant, no such plea was taken. He further asserts that the learned Lower Appellate Court has also not mentioned anything about the pendency of the application for additional evidence and, therefore, the present application for amendment of the grounds of appeal deserves dismissal. He further asserts that the amendment in the grounds of appeal has been made after a delay of more than 4 years from the initial date of filing of the application which is with an intention to delay the proceedings as the judgment and decree passed by the Lower Appellate Court is in favour of the respondent to deprive the respondent of the fruits of the decree.

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings, the present application and the records of the Lower Appellate Court.

It is true that the application for amendment of the grounds of appeal has been filed by the applicant-appellant at this stage after more than 4 years from initial filing of the application but that could not, in any manner, be taken as a ground for rejection of the application especially when the application under Order 41 Rule 27 CPC had been filed before the Lower Appellate Court which, according to the records available, has not been decided either along with the main judgment or prior thereto, meaning thereby that the said application was pending consideration before the Lower Appellate Court.

It may be added here that the reply to the application was also filed by the respondents. Therefore, it cannot be said that the said application was merely filed by the applicant and was pending consideration.

In the light of the above facts and circumstances of the case and keeping in view that it is a pure legal issue which can be raised at any time especially in the light of the judgment of the Supreme Court in **Jatinder Singh and another Minor through mother vs. Mehar Singh and others**, 2009 (1) RCR (Civil) 253, the present application deserves to be allowed.

In view of the above, the present application is allowed. Amendment to the grounds of appeal, as prayed for in the present application, is permitted. Amended grounds of appeal appended along with the application are taken on record.

RSA-686-2016 (O&M)

It is the contention of the learned counsel for the appellant that the appeal deserves to be allowed on the sole ground that an application under Order 41 Rule 27 CPC for additional evidence was preferred by the appellant on 18.12.2012 along with the appeal.

Notice in the said application was issued by the Lower Appellate Court, to which reply has been filed. The application was ordered to be heard along with the main appeal on 07.03.2014. On 23.04.2015, the said application along with the appeal was transferred to some other Court. The Court, which finally decided the appeal, did not pass any order on the application for additional evidence. The said aspect has been found to be correct as per the record.

Keeping in view the undisputed facts on record as also the judgment of the Hon'ble Supreme Court in **Jatinder Singh and another Minor through mother vs. Mehar Singh and others**, 2009 (1) RCR (Civil) 253, wherein it has been held that the judgment passed by the Court cannot sustain and the case has to be remanded back to the concerned Court for fresh decision either for deciding the application prior to the decision on the appeal itself or along with the appeal, the present appeal deserves to be allowed by setting aside the judgment of the Lower Appellate Court and the matter remanded back to the learned Addl. District Judge, Chandigarh for fresh decision.

In view of the above, the present appeal is allowed. The impugned judgment and decree passed by the Lower Appellate Court dated 13.08.2015 is, hereby, set aside. The appeal is remanded back to the Addl. District Judge, Chandigarh for fresh decision in accordance with law preferably within 6 months.

Parties are directed to appear before the Addl. District Judge, Chandigarh on 10.01.2020.

In view of order passed in the main case, no orders are required to be passed in the remaining pending applications.

December 13, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No