

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

**RSA No. 4057 of 2014 (O&M)
Date of Decision: January 21, 2019.**

B. P.Saxena and others

.....APPELLANTS.

VERSUS

Vijay Kumar

.....RESPONDENT.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arihant Jain, Advocate
for the appellants.

Mr. K.K.Jain, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

It is not disputed that the appellants had moved applications before the Ist Appellate Court under Order 41 Rule 27 CPC seeking permission to lead additional evidence and for amendment of the written statement and both the applications remain undecided.

Learned Additional District Judge, Patiala in his comments has stated that these applications were not pressed during the arguments, as such, escaped his attention and no order could be passed.

Learned counsel for the respondent submits that report of the Ist Appellate Court may be called on these applications and on the basis of report, this appeal be decided.

The submissions of learned counsel for the respondent cannot be accepted, for the reasons that in case the applications are allowed, the Ist Appellate Court has to proceed further to take amended written statement, replication, to frame fresh issues if required and to see as to whether parties are to be allowed opportunity to lead additional evidence. The respondent/plaintiff will have the right to challenge the order of Ist Appellate Court and in the event of application being declined, similar right will vest in appellant.

Keeping in view the above facts, this appeal is accepted and judgment and decree passed by the Ist Appellate Court is set aside. Parties are directed to appear before the Ist Appellate Court on 12.02.2019. The Ist Appellate Court/Successor Court, Patiala will take the appeal on Board, hear the parties to decide the applications and dispose of the appeal in accordance with law.

January 21, 2019.

Jyoti-II

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No