

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 39 of 2016 (O&M)
Date of Decision: 20.05.2019

Parminder Singh and another

....Appellants

VERSUS

M/s S.S.P. Private Limited

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bhoop Singh, Advocate
for Mr. Suveer Sheokand, Advocate
for the appellants.

Mr. A.P. Bhandari, Advocate
for the respondent.

SURINDER GUPTA, J. (Oral)

Heard.

The short question, which arises for consideration in this appeal, is as to whether on allowing application of defendant-respondent under Order XLI Rule 27 CPC, judgment of trial Court could be set aside and case could be remanded for decision afresh? To find answer to this question a reference can be made to provisions of Order XLI Rule 28 CPC, which reads as follows:-

“28. Mode of taking additional evidence - Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.”

Learned counsel for both the parties are *ad idem* on the issue

that learned Ist Appellate Court is required to proceed to decide the appeal in accordance with provisions under Order XLI Rule 28 CPC after allowing permission to defendant to lead secondary evidence by giving opportunity to the defendant/respondent to produce evidence, which could be recorded either by lower Appellate Court or by sending the case to lower Court to record the same and return the file to it for decision of the appeal on merit.

In view of above legal proposition, this appeal is partly accepted and order dated 22.04.2016 passed by learned Ist Appellate Court is set aside to the extent it remands the case to trial Court for fresh decision. As the allowing permission to the respondent to lead additional evidence has not been assailed by learned counsel for appellants, it be maintained to that extent.

Parties are directed to appear before learned Ist Appellate Court/successor Court on 05.07.2019, on which date appeal file shall be taken on board and proceeded further to decide the same as per above observations.

May 20, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***