

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3710 of 2017 (O&M)

Date of Decision: January 18, 2019

Bhateri & others

...Appellants

Versus

Kishan Lal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sumit Sangwan, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

The short point involved in the present appeal is that at the appellate stage, the appellant-defendants had filed an application under Order 41 Rule 27 CPC, which is reflected in the order dated 07.10.2014 of the Lower Appellate Court and the reply thereto was filed on 01.01.2016. Thereafter, the Lower Appellate Court while adjourning the appeal, noticed that the arguments on appeal and as well as on the application would be heard. On transfer of appeal, the new incumbent did not notice about the fact and dismissed the appeal without there being adjudication on the application. The law on this point is no longer *res integra* in view of the ratio decidendi culled out by Hon'ble the Supreme Court in **Malayalam Plantations Ltd. Versus State of Kerala & Another, 2011 AIR SC 559.**

It would be a total farcical exercise and expensive litigation in case I call upon the opposite party as the matter is required to be remanded in view of the orders dated 26.10.2015, 07.12.2015, 03.03.2016, 04.03.2016,

01.04.2016, 18.04.2016 and 06.05.2016. The same read thus:-

“26.10.2015

Arguments not advanced. An adjournment is requested by counsel for respondents on the ground that due to illness, he could not prepare the arguments. In view of his request, case is adjourned to 7.12.2015 for arguments.

07.12.2015

Arguments not advanced. An adjournment is requested by counsel for appellant. He has stated that he could not prepare the arguments as he was out of station. His request has not been opposed. Heard. In view of his request, case is adjourned to 12.01.2016 for arguments.

03.03.2016

Arguments not advanced. An adjournment is requested by counsel for respondents no.1 to 5. He has stated that he could not prepare the arguments due to failure of electricity in his locality. His request has not been opposed. Heard. In view of his request, case is adjourned to 04.03.2016 for arguments.

04.03.2016

Arguments not advanced. Along with an appeal an application under order 47 rule 27 CPC was filed. However, reply of the same could not be submitted by the counsel for the respondents no.1 to 5 on the ground that copy of the application was not supplied to him. Copy of application given today. Now to come upon 01.04.2016 for filing the reply and arguments on the application under Order 41 Rule 27 CPC. Arguments on the appeal be also heard simultaneously.

01.04.2016

Reply to the application under order 41 rule 27 CPC has been filed. Copy given. Shri Kuldeep Legha, Advocate, for appellants has stated that Kartar Singh one of the appellant has expired. The counsel for appellants is at liberty to file the list of his L.Rs on the date fixed. Now to come up on 18.4.2016 for arguments on the application under order 41 rule 27 CPC and arguments on the merits.

18.04.2016

Reply to application under order 41 Rule 27 CPC filed. The counsel for appellants has stated that L.R. of Kartar is already on file as Bhateri his mother and he was issue-less and unmarried. His statement to this effect has been recorded separately. Now to come up on 6.5.2016 for arguments on the application under order 41 rule 27 CPC as well as on merits.

06.05.2016

Arguments not advanced. Adjournment is requested by the learned counsel for the appellant. He has stated that he could not prepare the arguments as he was out of station. His request has not been opposed. Heard. In view of the request, case is adjourned to 21.05.2016 for arguments on the application under order 41 rule 27 CPC as well as on merits.

In view of the aforementioned orders and the ratio decidendi culled in the judgment cited supra, the impugned judgment and decree of the Lower Appellate Court is set-aside and the matter is remitted back to the Lower Appellate Court with a direction to decide the matter afresh along with the application filed under Order 41 Rule 27 CPC as it would defray the costs of litigation.

Appeal stands disposed of accordingly.

January 18, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No