

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

**RSA-4492-2013 (O&M)
Date of decision : 14.03.2022**

Sham Lal ... Appellant(s)

versus

Raja Ram ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jaideep Verma, Advocate for the appellant.

Mr. P.P.S. Duggal, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

Heard in physical mode.

The present appeal has been preferred against the judgments and decrees passed by the Courts below. The Trial Court had dismissed the suit of the plaintiff-appellant for possession by way of specific performance. The lower Appellate Court had partially reversed the judgment and decree of the Trial Court by granting alternative relief.

Learned counsel for the plaintiff-appellant has contended that an application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (in short 'CPC') was moved by the plaintiff-appellant before the lower Appellate Court on 14.10.2011 and the same was kept pending to be heard with the main appeal. However, at the time of decision in the main appeal, the said application for additional evidence has not been considered and no order qua the same has been passed. Learned counsel for the plaintiff-appellant has further contended that the said application for

additional evidence was necessary in order to show his readiness and willingness to perform his part of the contract. In order to buttress his arguments, learned counsel for the plaintiff-appellant has relied upon the following judgments :

1. **State of Rajasthan Vs. T.N. Sahani & Ors., [(2001) 10 Supreme Court Cases 619];**
2. **Ramesh Kumar & Anr. Vs. Bhagwan Dass Devki Nandan Dharamshala & Anr., [2012(2) PLR 534];**
3. **Municipal Committee, Ellenabad Vs. Shanti Devi, [2003(1) RCR (Civil) 85];**

Per contra, learned counsel for the defendant-respondent has vehemently contended that at no point of time was it pointed out by learned counsel appearing before the Lower Appellate Court at the time of arguments that an application for additional evidence remained pending. Learned counsel for the defendant-respondent has further contended that the said application even otherwise was not maintainable.

Heard.

Few facts relevant to the present *lis* may be noticed. The suit was filed by the plaintiff-appellant for possession by way of specific performance of agreement to sell dated 02.03.2006 qua the sale of land measuring 19 kanals 6 marlas as detailed in the headnote of the plaint. The Trial Court dismissed the suit *inter alia* holding that the plaintiff-appellant was neither ready nor willing to perform his part of the contract. The plaintiff-appellant preferred an appeal before the lower Appellate Court against the judgment and decree of the Trial Court dated 07.02.2011.

During the pendency of the appeal, an application under Order 41 Rule 27 CPC was filed by the plaintiff-appellant for additional evidence primarily to show that the plaintiff-appellant had the capacity to pay. The said application was ordered to be heard with the main case. However, at the time of hearing of the appeal, the said application was not decided and eventually the appeal was dismissed vide judgment and decree dated 29.04.2013. Aggrieved by the said judgments and decrees passed by the Courts below, the present regular second appeal has been preferred.

A perusal of the record reveals that on 14.10.2011 an application for additional evidence was filed by the plaintiff-appellant and the case was adjourned to 21.10.2011 for filing of reply. On 21.10.2011 reply was not filed and the case was adjourned to 04.11.2011 for reply and consideration. On 04.11.2011 reply to the application for additional evidence was filed and the case was adjourned for consideration and for arguments on the main case to 02.12.2011. Thereafter, on various dates, the case was adjourned for arguments. The lower Appellate Court while deciding the main appeal has not dealt with the application filed under Order 41 Rule 27 CPC.

In the case of **T.N. Sahani** (*supra*), Hon'ble the Supreme Court has held as under :

“4. It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy AIR 1963 SC 1526 pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state

of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.”

In the present case, since the application under Order 41 Rule 27 CPC remains undecided and as per the judgment of Hon'ble Supreme Court in the case of **T.N. Sahani** (*supra*) it is incumbent upon the lower Appellate Court to decide the application under Order 41 Rule 27 CPC along

with the main appeal, I deem it appropriate to allow the present appeal and set aside the judgment and decree dated 29.04.2013 passed by the Lower Appellate Court. The case is remanded back to the lower Appellate Court for deciding the appeal afresh along with the application under Order 41 Rule 27 CPC.

The parties/their counsel are directed to appear before the lower Appellate Court on 31.03.2022.

Disposed off accordingly.

14.03.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO