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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-30868-2019 (O&M)

Date of decision: August 10, 2022

Manmohan Singh

...Petitioner

Versus

Union Territory, Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Shashank Shekhar Sharma, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

Ms. Gursimran Kaur, Advocate for
Mr. Ashish Rawal, Advocate for respondents No.1 to 3.

Mr. Anupam Gupta, Senior Advocate with
Mr. Gautam Pathania, Advocate for respondents No.4 and 5.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing an appellate order, which was reserved on 25.07.2019 and pronounced on 26.09.2019 (Annexure P-12) passed by respondent No.2. Thereby, without deciding the appeal on merits filed by the petitioner, same has been merely remanded back to the Maintenance Tribunal directing it to pass order afresh. Claim of the petitioner for eviction of respondents No.4 and 5 from the premises in question was earlier dismissed by the tribunal.

2. I have heard the respective competing contentions of the learned seniors. Keeping in view the nature of controversy involved herein, since the same is already *res judice*, I need not labor all over again. Reference may simply be had to my earlier decision rendered in **CWP-25148-2018** titled

Surindera Devi versus State of Punjab and others, vide judgment/order dated 14.07.2022, relevant thereof is extracted herein below:-

“7. In this background, the meaning and intent of Section 16 of the Act assumes even more significance inasmuch as a bare reading of the same would reveal that while the appellate authority has been specifically conferred the power to examine the appeal and the records and either call for same before it from the Tribunal and thereafter either to allow it or reject it. The words ‘remand’ are missing in Section 16 of the Act, unlike the case under Order 41 Rules 23 and 25 of CPC where the appellate Court is specifically conferred the power of remand.

X-X-X-X-X-X

8. In the totality of circumstances and as an upshot of the above discussion, I am of the view that the appellate Tribunal is not conferred with the power of remand under Section 16 of the statute and upon entertaining the appeal must either reject or accept the same, wholly or partly as the case may be. Therefore, the impugned appellate order herein is not sustainable and is accordingly set-aside. The matter is remanded back to the appellate Tribunal for fresh consideration and adjudication. The parties are at liberty to move appropriate application before the appellate Tribunal.”

3. In the premise, writ petition is disposed of in terms of judgment *ibid* and appellate order is quashed. Since the order impugned herein is being set aside, it is expected of the Appellate Authority to decide the pending appeal afresh after examining every aspect of it on its own merits without being influenced by its earlier order of remand. Given the age of the petitioner-Senior Citizen, who is stated to be currently 90-year old, it is expected that the Appellate Tribunal shall not grant unnecessary adjournments and decide the case as expeditiously as possible, in any case, within a period of 6 months.

4. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 10, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No