

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

(102+204)

**CM-8942-C-2022 and
CM-8945-C-2022 in/and
RSA-1904-2019 (O&M)
Date of Decision : April 19, 2023**

Roshan Lal

.. Appellant

Versus

Raghbir Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.S. Dadwal, Advocate, and
Ms. Neha Jain, Advocate, for the appellant.

Mr. Sanjay Majithia, Senior Advocate, with
Mr. Sumit Sinha, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-8942-C-2022

Present application has been filed for preponing the date of
hearing of the main appeal from 09.02.2023 to an early actual date.

As the main appeal is listed today, present application has
become infructuous.

CM stands disposed of as infructuous.

CM-5168-C-2019

As prayed for, the application is allowed.

RSA-1904-2019

Present Regular Second Appeal has been filed against the judgment and decree dated 08.12.2015 of the trial Court whereby the suit for specific performance of the agreement to sell dated 01.07.2004 filed by the respondent-plaintiff was decreed as well as to the judgment and decree dated 25.10.2018 of the lower Appellate Court whereby the appeal filed by the appellant herein has been dismissed.

The only argument raised by the learned counsel for the appellant in the present case is that along with the appeal filed before the lower Appellate Court, an application was also filed under Order 41 Rule 27 of the CPC for producing additional evidence.

Learned counsel for the appellant submits that from the zimni order, copy of which has been attached as Annexure A-2 with the present appeal, notice of the said application was also given to the opposite counsel and as per the various zimni orders, the said application remained pending for consideration for passing appropriate order and there is no order on the file of the lower Appellate Court that the application filed under Order 41 Rule 27 of the CPC was decided prior to the deciding of the appeal by the lower Appellate Court or along with the main appeal.

Learned counsel for the appellant further submits that keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.2699 of 2008 titled as Hakam Singh vs. State of Haryana and others, decided on 09.04.2008***, any application filed for adducing additional evidence is to be decided prior to the decision of the suit or appeal concerned as the case may be and in the absence of deciding

the said application, final order passed cannot be sustained.

Learned senior counsel for the respondent very fairly submits that keeping in view the fact that application filed by the appellant under Order 41 Rule 27 of the CPC was not decided before passing the final order on the appeal preferred, the case will be covered by the judgment of the Hon'ble Supreme Court of India in ***Hakam Singh's case (supra)***.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the record, it transpires that the application filed under Order 41 Rule 27 of the CPC before the lower Appellate Court remained pending consideration even up to the date of final judgment and decree passed by the lower Appellate Court on 25.10.2018. That being so, the issue in question is covered by the judgment of the Hon'ble Supreme Court of India in ***Hakam Singh's case (supra)***. The relevant paragraph of which is reproduced hereinafter.

“4. Without going into the facts in detail, these appeals can be disposed of on a very short point. It is an admitted position that an application under Order 41 Rule 27 of the Code of Civil Procedure (In short "CODE") for acceptance of additional evidence was filed before the High Court in the aforesaid First Appeals, which were dismissed by the High Court by the impugned order. However, the application for acceptance of additional evidence under Order 41 Rule 27 of the CODE was not considered by the High Court while disposing of the appeal.

5. That being the position, without going into the legality and propriety of the impugned order of the High Court passed

in the aforesaid appeals, we set aside the same and remit back the cases to the High Court for decision of the Appeals afresh on merits and in accordance with law along with the application for acceptance of additional evidence under Order 41 Rule 27 of the CODE.

6. Accordingly, the impugned order is set aside. The High Court is requested to dispose of the First Appeals in the light of the observations and directions made hereinabove within three months from the date of supply of a copy of this Order along with application for acceptance of additional evidence under Order 41 Rule 27 of the CODE.”

Keeping in view the above, the judgment and decree of the lower Appellate Court dated 25.10.2018 is set aside and the case is remanded back to the lower Appellate Court to decide the appeal as well as the application filed under Order 41 Rule 27 of the CPC afresh in accordance with law after giving due opportunity to the parties concerned.

As the parties are litigating since long, it will be appreciated that the lower Appellate Court decides the appeal within a period of four months from the first appearance of the parties concerned.

Parties are directed to appear before the lower Appellate Court on 17.05.2023.

It is made clear that the execution proceedings initiated on the basis of the judgment and decree of the Court below, will remain subject to the fresh order to be passed by the lower Appellate Court.

The present Regular Second Appeal is allowed in above terms.

**CM-8942-C-2022 and CM-8945-C-2022 in/and
RSA-1904-2019 (O&M)**

2023:PHHC:054415 5

CM-8945-C-2022, CM-6206-C-2022 and CM-5169-C-2019

As the main appeal has been disposed of, present applications
also stand disposed of.

April 19, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No