

2023:PHHC:092270
125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-28-2019 (O&M)

Date of decision: 19.07.2023

Manoj

....Appellant

Versus

Parvinder Kaur and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ramandeep, Advocate for the appellant

Mr. Rakesh Chopra and

Mr. Jashan Chopra, Advocates for the respondents

ANIL KSHETARPAL, J (Oral)

1. While hearing the appeal against the order passed by the trial court dismissing the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), the First Appellate Court has remitted the matter back to the trial court for deciding the matter afresh. The correctness of the said order passed by the Appellate Court is assailed before this Court. The powers of the Appellate Court to remand the case back to the trial court is regulated by Section 107 read with Order XLI Rule 23 and 23 A of CPC. Rule 23 provides that if the suit has been decided upon a preliminary point and the decree passed in the suit is reversed in the appeal, the Appellate Court may, if it thinks fit, remand the case back to the trial court. Rule 23 A provides that the Appellate Court has a power to remand the case back to the trial court if the decree is reversed in appeal and re-trial is considered necessary. Thus, there are twin conditions which are required to be fulfilled before an order remanding the case back to the

trial court is passed under Rule 23 A. Firstly the decree is reversed in appeal. Secondly, the re-trial is considered necessary.

2. Learned counsel representing the respondent though made sincere attempts, however, failed to show that the Appellate Court has fulfilled the parameters laid down in Rule 23 A of Order XLI. Though the order has been passed in an appeal from the miscellaneous proceedings, however, in view of Section 141 of the CPC, the procedure laid down for the suit shall be applicable.

3. Keeping in view the aforesaid facts, the order passed by the Appellate Court is set aside. The Appellate Court is requested to decide the appeal afresh, on merits.

4. Disposed of.

5. The parties through their learned counsel are directed to appeal before the Appellate Court on 22.08.2023.

6. All the pending miscellaneous applications, if any, are also disposed of.

19.07.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE