

2023:PHHC:149468
**149 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

SAO-45-2023 (O&M)
Date of decision: 22.11.2023

Gurmeet Kaur and another

....Appellants

Versus

Harman Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sharad Mehra, Advocate for the appellants
Mr. Sandeep Arora, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. On 13.10.2023, the following order was passed by this

Court:-

*“The learned counsel representing
the appellant inter alia contends that the First
Appellate Court has erred in remanding the case
back to the trial Court for fresh decision only on
culling out certain additional issues.*

Notice of motion for 30.10.2023.

To be listed in the urgent list.

*The appellants shall have liberty to
serve the respondent through his counsel in the
trial Court.*

Dasti as well.”

2. Learned counsel representing the respondent does not dispute the factual position, however, he submits that in the interest of justice, the order passed by the First Appellate Court should be upheld as the parties will be required to lead evidence.

3. As per the provisions of Order XLI Rule 23 and 23-A of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’), the First Appellate Court can pass orders remanding the

case back to the lower court only in certain eventualities. In fact, this issue has been examined by this Court in detail in SAO-82-2015 titled as ‘**Smt. Bhagwan Devi (since deceased) through her LRs vs. Smt. Veena Devi @ Krishna Devi and another**’ decided on 18.07.2023, in the following manner:-

“4. The power of the Appellate Court to remand the case back to the lower court is regulated by Section 107 read with Order XLI Rule 23 and 23A of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’). Rule 23 of Order XLI of CPC enables the Appellate Court to remand the case back to the trial court if the judgment has been passed on a preliminary issue and the aforesaid finding on the preliminary issue has been set aside by the Appellate Court. Rule 23A enables the Appellate Court to remand the case back to the trial court if the decree is reversed in appeal and a re-trial is considered necessary. Thus, the power of remand of the Appellate Court is available only in the eventualities provided under Rule 23 and 23A of Order XLI. It is incumbent for the Appellate Court to set aside the judgment and decree passed by the trial court on merits and conclude by giving adequate reason for necessity of retrial of the suit. On a careful reading of the operative part of the impugned judgment, it is evident that the court has neither set aside the judgment of the trial court on merits nor it has recorded the reasons for which the re-trial is considered necessary. Learned counsel representing the respondent though requested to explain the reasons for necessity of re-

trial, however, he failed to draw the attention of the Court in this regard.”

4. In this case, only the additional issue has been framed by the First Appellate Court. Order XLI Rule 25 enables the court to record evidence or to seek report from the trial court on an issue. In such situation, it was not appropriate for the First Appellate Court to remand the case back to the trial court after setting aside the judgment and decree passed by the trial court.

4. Keeping in view the aforesaid facts, the order passed by the First Appellate Court is set aside to this extent. The first appeal is restored to its original number. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 20.12.2023.

5. Disposed of, accordingly.

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

22.11.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE