

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

223 (03 cases)

**(1)RSA-3708-2014(O&M)
Date of Decision :25.01.2023**

Food Corporation of India and another

...Petitioners

Versus

M/s Joginder Singh Varinder Kumar

...Respondent

(2) RSA-4261-2014(O&M)

Food Corporation of India and another

...Petitioners

Versus

M/s Joginder Singh Varinder Kumar

...Respondent

(3) RSA-4283-2014 (O&M)

Food Corporation of India and another

...Petitioners

Versus

M/s Joginder Singh Varinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.K. Gupta, Advocate for the appellant-Corporation.

Mr. V.K. Sandhir, Advocate for the respondents.

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Harsimran Singh Sethi, J. (Oral)

By this common order, the above mentioned three regular second appeals are being disposed of as all the appeals involve the same question of law and similar facts.

The present regular second appeals which have been filed by the appellant-Corporation have arisen out of the judgments dated 30.05.2011 and 18.12.2013 passed by the trial Court as well as Lower Appellate Court respectively. The question which has been raised for the consideration of this Court is that while the appeal was pending before the Lower Appellate Court against the judgment and decree passed by the trial Court dated 30.05.2011 as well as cross-objections filed by the plaintiffs, an application was filed by the respondents therein i.e. appellant-Corporation under Order 41, Rule 27 of the CPC for leading additional evidence on 05.07.2013 in which, though, notice was issued but the same was not decided by the Lower Appellate Court before finally deciding the appeal as well as cross-objections.

Learned counsel for the appellant-Corporation argues that the said aspect of non-deciding of the application for leading additional evidence filed by the appellant-Corporation under Order 41, Rule 27 of the CPC before finally deciding the appeal and cross-objections is causing prejudice to the appellant-Corporation as their valuable right of producing additional evidence has not been considered and allowed by the Lower Appellate Court. Reliance has been placed on the judgement of the Hon'ble Supreme Court of India in **Appeal (Civil) 2699-2008** titled as **Hakam Singh vs. State of Haryana and others** decided on 09.04.2008 wherein also, Hon'ble Supreme Court of India had set aside the order passed by this

Court on the ground that the application under Order 41, Rule 27 of the CPC seeking production of additional evidence at the appellate stage remained pending and the final order was passed without any decision on the application under Order 41, Rule 27 of the CPC.

Learned counsel for the respondents after going through the Lower Courts record concedes the factum of filing of application by the appellant-Corporation under Order 41, Rule 27 of the CPC, notice of which was issued to the respondents by the Lower Appellate Court during the pendency of the appeal therein and reply to the said application was also filed by the respondents. Learned counsel for the respondents also concedes the fact that while deciding the appeal, application under Order 41, Rule 27 of the CPC remained pending and no order has been passed with regard to the said application.

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

As per the settled principle of law settled by the Hon'ble Supreme Court of India on the issue concerned in **Hakam Singh (supra)** the order passed in the appeal cannot be sustained and the Lower Appellate Court is liable to be directed to decide the appeal again after passing an appropriate order on the application filed under Order 41, Rule 27 of the CPC. Relevant paragraphs of the judgment are as under:-

“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.”

Learned counsel for the respondents has not been able to show that the said judgment in **Hakam Singh (supra)** is not applicable in the facts and circumstances of the present case.

Keeping in view the above, present regular second appeals are allowed on the ground that non-deciding of the application filed by the appellant under Order 41, Rule 27 of the CPC has caused prejudice to the appellant but without making any observation on the merits of the case accordingly, the judgment of the Lower Appellate Court dated 18.12.2013 is set aside and the case is remanded back to the Lower Appellate Court with a direction to decide the appeal as well as cross-objections filed by the respondents afresh after deciding the application filed by the appellant-Corporation under Order 41, Rule 27 of the CPC.

Learned counsel for the respondents at this stage submits that decree of the trial Court dated 30.05.2011, as modified by the lower Appellate Court vide order dated 18.12.2013, has already been complied with.

As only the judgment of the Lower Appellate Court has been set aside by this Court and that too on technicalities, the execution of the decree passed by the trial Court will be subject to the order passed in the appeal.

Registry is directed to return the record of the Courts below to the concerned Courts.

Parties are directed to appear before the Lower Appellate Court on 20.07.2023.

As the matter is pending consideration before the Courts for the last so many years, it will be much appreciated, if the Lower Appellate Court decides the appeal along with the application filed therein under Order 41, Rule 27 of the CPC as expeditiously as possible preferably within a period of six months.

Main appeals as well as civil miscellaneous applications pending if any, are disposed of.

A photocopy of this order be placed on the file of connected cases.

January 25, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No