



RSA-905-1992(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-905-1992(O&M)

Date of decision : 20.08.2024

Didar Singh (since deceased) through his LRs

... Appellant

Versus

Darshan Singh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHLPresent: Mr.Rajinder Goel, Advocate
for the appellant.Mr.Malkeet Singh, Advocate
for respondent no.1.**VIKAS BAHL, J.(ORAL)**

1. The present Regular Second Appeal has been filed by the defendant (presently through his LRs) against the judgment and decree dated 07.09.1987 whereby the suit filed by the respondents for possession of land measuring 37 kanals 8 marlas has been decreed along with the relief for recovery of Rs.9850/-. Challenge is also to the judgment and decree dated 16.03.1992 vide which the appeal filed by the present appellant has been dismissed. The present appeal has been filed under Section 41 of the Punjab Courts Act, 1918.

2. Learned counsel for the appellant has raised a preliminary point for allowing the present appeal. It is submitted that the present appellant had filed an application dated 19.03.1990 under Order 41 Rule 27 CPC for

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producing on record additional evidence / documents which included copy of the Central Government order directing the applicant to deposit the previous rent, in the treasury and to cultivate the land in suit in future on rent along with other important documents. It is submitted that although reply was filed to the said application but the application had not been decided by the Ist Appellate Court while dismissing the appeal filed by the appellant vide judgment and decree dated 16.03.1992. Reference has been made to the zimni orders passed by the Ist Appellate Court to show that the said application has not been considered much less decided. It is further submitted that even a perusal of the judgment of the Ist Appellate Court would show that no reference has been made to the said application and the appeal of the appellant has been dismissed without considering the said application. It is argued that the documents sought to be produced were material documents and thus, non-adjudication of the application under Order 41 Rule 27 CPC amounts to miscarriage of justice and on the said short point alone, the present appeal deserves to be allowed and the matter deserves to be remanded back. In support of his arguments, learned counsel for the appellant has relied upon the judgments of the Hon'ble Supreme Court in the case of *Satish Chand Surana vs. Raj Kumar Meshram* reported as *2021 SCC OnLine SC 3446*; *Hakam Singh vs. State of Haryana and Others* reported as *2008(4) R.C.R. (Civil) 422*; *M/s Eastern Equipment & Sales Ltd. vs. ING. Yash Kumar Khanna* reported as *2008 (12) SCC 739*; and judgment of the Coordinate Bench of this Court in the case of *Shaukin Singh and others vs. Bishan Singh (since deceased)*



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through his L.Rs. reported as *2011 AIR (Punjab and Haryana) 189* and also another judgment of the Coordinate Bench of this Court in the case of *Food Corporation of India and another vs. M/s Joginder Singh Varinder Kumar* reported as *2023(2) Law Herald 1374*.

3. Learned counsel for respondent no.1 has submitted that the appeal has been rightly dismissed by the Ist Appellate Court and the same does not call for any interference. The factum of filing of the application and non-adjudication of the same, however, could not be disputed.

4. This Court has heard the learned counsel for the parties and has perused the paper book and the record of the case.

5. The substantial question of law which arises for consideration in the present case is:-

“Whether the judgment of the Ist Appellate Court is sustainable in view of the fact that the application under Order 41 Rule 27 CPC filed by the present appellant during the pendency of the first appeal, has not been decided by the Ist Appellate Court.”

6. Before considering the legal aspects, it would be relevant to briefly note the facts of the present case. Respondents no.1 to 5 (hereinafter referred to as “the plaintiffs”) filed a suit against the defendant-present appellant (presently represented by his LR) for possession of land measuring 37 kanals 8 marlas comprised in khasra nos.11/11/1, 12, 10, 1 (1-7)(8-0)(8-0)(7-3) and 12/16, 25/1 (8-0) (4-18) khewat khatawni nos. 2 min/9, 6/24, 6/29, 8 min /35 17 min/51 according to jamabandi for the year 1975-76 situated in village Hedarpur, Hadbast no.233, Tehsil Jagadhri,

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District Ambala and recovery of Rs.9,850/- as compensation for breach of agreement dated 21.01.1978. The case of the plaintiffs in the plaint was that the suit land was allotted to the plaintiffs by the Rehabilitation Department about 30 years prior to the filing of the plaint in lieu of the land left by them in West Pakistan from where they had migrated. In the plaint, reliance was placed upon an agreement dated 21.01.1978, as per which the defendant was to enjoy possession of the property after giving half share of crop to the plaintiffs and that the defendant would get the other half share. There were other terms and conditions of the said agreement. It was the case of the plaintiffs that the said agreement was violated by the defendant and thus, accordingly, the suit was filed. A written statement was filed by the defendant in which it was pleaded that the allotment in favour of the plaintiffs was temporary and the same was cancelled vide order dated 29.06.1972. It was further pleaded by the defendant that he was in possession of the suit land as tenant paying Batai in the form of cash and the receipts for the said payment were in possession of the defendant. The agreement dated 21.01.1978 was denied and it was stated that the same was a result of fraud and misrepresentation and was null and void and was also against the provisions of the Punjab Security of Land Tenures Act. An additional plea was taken to the effect that the plaintiffs had no locus standi to file the suit as the allotment in favour of the plaintiffs had been cancelled and the plaintiffs had ceased to be the owner of the suit land and therefore, they have no right to institute the suit and that the defendant was a tenant in the suit property and could be ejected from the suit land only according to

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the Punjab Security of Land Tenures Act.

7. The trial Court vide judgment and decree dated 07.09.1987 had decreed the suit of the plaintiffs.

8. The present appellant had filed an appeal against the said judgment and decree. During the pendency of the appeal, the present appellant had filed an application dated 19.03.1990 for additional evidence by way of which the present appellant wanted to produce the following documents:-

“10. That in order to come to right conclusion and to clarify the things before the Hon'ble Court so that this Hon'ble Court can give correct and effective judgment to promote the ends of justice it is necessary that the applicant be allowed to produce the following documents on the file:-

(a) Copy of the Central Government order and its officers directing the applicant to deposit the previous rent in the treasury and to cultivate the land in suit in future on rent.

(b) Receipts for the deposit of rent.

(c) Notice of the rent.

(d) Application of the appellant for allotment of the land to him.

(e) Order of cancellation of allotment of land in suit.

(f) Copies of roznamcha and other relevant documents.”

9. It was the case of the appellant-defendant that the said documents were necessary for the final and proper adjudication of the case.

A perusal of the zimni orders passed by the Ist Appellate Court would show that on 24.03.1990, the factum of filing the present application had been



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duly noticed. On 28.09.1991, a reply to the application was filed by the plaintiff-respondent although earlier his right to file the reply was closed. The zimni orders dated 24.03.1990 and 28.09.1991 are reproduced hereinbelow:-

“Present: Appellant in person.

Shri Ajai Jain proxy counsel for Shri G.S.Guliani, counsel for the respondent.

Written argument not filed. Instead appellant has moved an application for additional evidence. For reply and consideration on this application to come up on 30.3.1990.

ADJ 24.3.1990”

XXX XXX XXX

Present: Advocate Jasmer Singh counsel for appellant. Advocate G.S. Guliani counsel for respondent.

Learned counsel for the respondent has filed reply of the application for additional evidence has been filed, although his right to file the reply was closed. Learned counsel for the parties have however, requested for an adjournment. The case is, therefore, adjourned for arguments in the main case as well as on the application to 29.11.1991.

ADJ/28.9.1991.”

10. On several dates, the matter was adjourned, for arguments on the application as well as on the main appeal, but however, a perusal of the zimni orders would show that the said application was not decided and the main appeal was disposed of vide order dated 16.03.1992. It could not be disputed before this Court that there was no separate order passed in the application under Order 41 Rule 27 CPC and that the application was not considered while dismissing the appeal filed by the present appellant by the



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Ist Appellate Court vide judgment and decree dated 16.03.1992.

11. That in view of the aforesaid admitted position, it is now relevant to refer to law on the said aspect. The Hon'ble Supreme Court of India in the case of **Satish Chand Surana (supra)** had observed that the dismissal of the main case without deciding the application for additional evidence would result in miscarriage of justice and on the said ground alone, the matter was remanded back to the High Court for consideration afresh. The relevant portion of the said judgment is reproduced hereinbelow:-

“8.....Dismissal of the main appeal without deciding the application for additional evidence would result in miscarriage of justice. The First Appellate court, being the last court of facts and evidence, should permit the production of additional evidence where the explanation furnished by the party is satisfactory and the documents in question are vital to establish the case.

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10. In the instant appeal, it is clear that the High Court has proceeded to dismiss the appeal without considering the application filed by the appellant-plaintiff. In our view, the High Court has to consider the matter afresh in the light of the observations made above.

11. In the result, the appeal succeeds and is accordingly allowed in part. The judgment of the High Court impugned herein is set aside. The matter is remitted back to the High Court for fresh disposal in accordance with law and in view of the observations made above.

12. Pending application(s), if any, shall stands disposed of. There will be no order as to costs.”



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12. The Hon'ble Supreme Court in the case of **Hakam singh (supra)** had also remanded back the case to the High Court solely on the ground that the application under Order 41 rule 27 CPC was not considered by the High Court while disposing of the main appeal. The relevant portion of the judgment is reproduced hereinbelow:-

*“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.”

13. The Coordinate Bench of this Court in the case of **Shaukin**

Singh and others (supra) had also held as under:-



“9. What cannot possibly be disputed here is that the parties have a statutory right to lead additional evidence and the Ist Appellate Court has the power to allow such additional evidence, inter alia, for any other substantial cause, as envisaged under [Order 41 Rule 27 CPC](#). The Ist Appellate Court was well within its jurisdiction either to allow or to decline the production of additional evidence to a party, as the case may be. But dismissing the main appeal on merits, without deciding the application for additional evidence has naturally resulted in miscarriage of justice to the case of appellant-defendants and renders the impugned judgment and decree, as illegal.

*10. As to whether the defendants were entitled to lead additional evidence or not, is a matter to be decided by the Ist Appellate Court, but the appeal cannot legally be decided on merits, without deciding the application for additional evidence. The law [laid down by](#) Hon'ble Apex Court in *Hakam Singh and M/s Eastern Equipment & Sales Ltd.*'s cases (*supra*) "mutatis mutandis" is applicable to the facts of this case and is the complete answer to the problem in hand. Thus, the impugned judgment and decree cannot legally be maintained, in the obtaining circumstances of the case. Therefore, to me, it would be in the interest and justice would be sub-served, if the matter is remanded back to the first Appellate Court in this relevant connection.”*

14. To the similar effect is the law laid down by the Coordinate Bench of this Court in ***Food Corporation of India (supra)***.

15. A perusal of the above said judgments would show that it has been repeatedly held by the Hon'ble Supreme Court of India as well as by this Court that the judgment of the Ist Appellate Court would be contrary to

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law in case the application under Order 41 Rule 27 CPC has not been decided while deciding the main appeal and on the said ground alone, without getting into the merits of the application, the matter has to be remanded back to the earlier Court for fresh adjudication after taking into consideration the application under Order 41 Rule 27 CPC. No contrary judgment to the same has been cited.

16. Thus, the question of law, which arises in the present appeal, is answered in favour of the appellant and against the respondent.

17. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of ***Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters*** reported as ***(2016) 6 Supreme Court Cases 157***, it was observed that Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e. ground No.(a) is the decision being contrary to law or to some custom or usage having the force of law. The judgment of the Ist Appellate Court is contrary to law.

18. Keeping in view the above said facts and circumstances, the

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present appeal is partly allowed and the judgment of the Ist Appellate Court dated 16.03.1992 is set aside and the case is remanded back to the District Judge, Yamuna Nagar at Jagadhri for either deciding the appeal himself or for assigning the same to the Court of competent jurisdiction. The District Judge, Yamuna Nagar at Jagadhri or the competent Court to which the appeal has been assigned, would decide the appeal afresh along with the application under Order 41 rule 27 CPC, in accordance with law, after taking into consideration the pleas raised by all the parties concerned. The case is being remanded back to the District Judge, Yamuna Nagar at Jagadhri, although the appeal has been decided by the District Judge, Ambala, in view of the fact that it has been brought to the notice of this Court that the original suit was decided by the Civil Court at Jagadhri and at that time, the appeal from the said judgment and decree lied before the District Court at Ambala whereas now the appeals are maintainable before the District Courts at Yamuna Nagar at Jagadhri.

19. It is also made clear that this Court has neither opined on the merits of the case nor has opined on the merits of the application under Order 41 Rule 27 CPC and thus, both the appeal and the application under Order 41 Rule 27 CPC would be considered independently, in accordance with law.

20. Parties to the present lis are directed to appear before the District Judge, Yamuna Nagar at Jagadhri on 16.09.2024 and to inform the District Judge about the passing of the present order. On the said date, it would be open to the District Judge to either list the appeal before himself



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or assign it to any Court of competent jurisdiction. Thereafter, in case of non-appearance of any party, notice would be issued to the said party for their service and after due service, the appeal would be decided as expeditiously as possible.

**(VIKAS BAHL)
JUDGE**

August 20, 2024
Davinder Kumar

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