



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 69 of 2015 (O&M)

Date of Decision: 22.07.2024

Ravinder Singh

... Appellant(s)

Versus

Balkar Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Pulkit Dhanda, Advocate
for Mr. Pardeep Singh Poonia, Advocate
for the appellant(s).

Mr. H.K.Aurora, Advocate
for the respondent.

Anil Kshetarpal, J.

1. In this Second Appeal against the order remitting the case back to the Trial Court, the defendant assails the correctness of the First Appellate Court's order dated 10.07.2015. The plaintiff's suit for ejectment by way of possession was decreed by the Trial Court on 24.05.2014. The First Appellate Court has remitted the matter back to the Trial Court on the ground that the additional issues framed by the Court on 24.07.2013 have not been decided.

2. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

3. The enabling power of the Appellate Court to remit the matter back to the Trial Court is regulated by Order XLI Rule 23 and Order XLI

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“CPC”). The scope and ambit of such enabling power is explained in *P.Purushottam Reddy and Another v. Pratap Steels Ltd. (2002) 2 SCC 686*.

4. This case does not fall either in the category governed by Order XLI Rule 23 or Order XLI Rule 23A CPC. The First Appellate Court has not set aside the judgment of the Trial Court after discussing the same on merits. The First Appellate Court has also not found that retrial of the case is necessary. The Appellate Court has the jurisdiction to seek report from the Trial Court, if so advised. The First Appellate Court can itself decide the additional issues. However, on this ground alone, it was not appropriate for the First Appellate Court to remit the matter back to the Trial Court.

5. Keeping in view the aforesaid facts, the present appeal is allowed and the impugned order passed by the First Appellate Court is set aside. The appeal before the First Appellate Court is restored at its original number. The parties, through their learned counsel, shall appear before the First Appellate Court, on 20.08.2024.

6. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 22, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No