



113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-47-2016 (O&M)

Date of decision: 27.05.2024

Punjab State Electricity Board

....Appellant

Versus

Aman Kirpal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Gurmandeep S Sullar, Advocate and
Ms.Diksha Rani, Advocate for the appellant

Mr. B.B.Bagga, Advocate for respondents no.1 and 2

ANIL KSHETARPAL, J (Oral)

1. This Second Appeal against Order has been filed by the plaintiff to challenge the correctness of the First Appellate Court's order remitting the matter back to the trial court for fresh decision on the ground that the trial court has failed to decide issue no.3, which reads as under:-

“3. Whether the suit is barred under provisions of companies act 1956, as prayed for? OPD.”

2. The plaintiff filed a suit for recovery of Rs.58,66,069/-, which was decreed by the trial court. It was specifically observed that in para 20 of the trial court judgment, issue no.3 was never pressed by the defendants, however, this position was disputed before the First Appellate Court. Hence, the First Appellate Court, while invoking Order XX Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') held that the trial court is required to decide all the issues



elaborately. Hence, the First Appellate Court remitted the matter back to the trial court for fresh decision.

3. Learned counsel representing the respondents submits that the defendants had already resigned from defendant no.1-Company and hence, the suit was not maintainable against defendant no.2 and 3.

4. This Court has considered the submissions made by the learned counsel representing the parties.

5. Issue no.3 has already been extracted above. The aforesaid issue is not with respect to the fact that whether defendants no.2 and 3 have resigned or not. In any case, the enabling power of the Appellate Court to remit the matter back to the lower court is regulated by Order XLI Rule 23 and 23 A CPC. In this case, Order XLI Rule 23 CPC is not applicable because the suit was not decided on a preliminary issue, and Order XLI Rule 23A CPC can be invoked only if the judgment passed by the lower court is set aside or reversed in appeal and the re-trial is considered necessary. In this case, the First Appellate Court has failed to fulfill both the requirements as required for remitting the matter back to the trial court. The essential requirements have been elaborately examined by Supreme Court in **P.Purushottam Reddy and Another v. Pratap Steels Ltd. (2002) 2 SCC 686**, in the following manner:-

“10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an



omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand in as much as the subordinate court can try only such issues as are referred to it for trial and having done so the evidence recorded together with findings and reasons therefore of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under Section 151 of the CPC to order a remand if such a remand was considered pre-eminently necessary ex debito justitiae, though not covered by any specific provision of Order 11 of the CPC. In cases where additional evidence is required to be taken in the event of any one of the clause of Sub-rule (1) of Rule 27 being attracted such additional evidence oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because as held in Mahendra v. Sushila (AIR 1965 SC 365 at p.399), it is well settled that inherent powers can be availed of ex debito justitiae only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand de hors the Rules 23 and 23A. To wit the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 11 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore must be avoided.”



6. Keeping in view the ratio decendi laid down by the Supreme Court in the aforementioned case, the impugned order passed by the First Appellate Court, being un-sustainable, is set aside. The appeal is restored to its original number. The First Appellate Court shall have liberty to decide issue no.3, if found necessary. The parties through their learned counsels are directed to appear before the First Appellate Court on 19.07.2024.

7. Disposed of.

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

27.05.2024
rekha

(ANIL KSHETARPAL)
JUDGE

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