

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

SAO-75-2018 (O&M)
Date of decision: 27.05.2024

SANJAY

..Appellant

Versus

MUKESH KUMAR AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

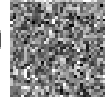
Present: Mr. Vikram Singh Punia, Advocate
for the appellant.

Mr. Dalip Kumar Tuteja, Advocate
for respondent No.1.

Mr. A.S. Shera, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. The defendant has filed this second appeal against the First Appellate Court's order remitting the case back to the trial Court. The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 21.04.2003, which was contested by the defendant (appellant herein). Ultimately, the suit was dismissed by the trial Court. In the first appeal filed by the plaintiff, an application for permission to lead additional evidence was filed, which has been allowed by the Court on the ground that the additional evidence sought to be produced, is essential for fair and proper adjudication of the case. In fact, the plaintiff seeks to examine three witnesses namely Sh. Sajjan Kumar, Nambardar of Village Sisana, who is a witness to the agreement to sell, Sh. Rajender Kumar Gilohtra, stamp vendor, Kharkhoda, to prove the stamp purchased by defendant No.1 and handwriting and fingerprint expert to prove signatures of



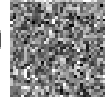
defendant No.1 on the agreement to sell. While allowing the application, the First Appellate Court has remitted the matter back to the trial Court for deciding afresh.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. The learned counsel representing the appellant submits that the plaintiff cannot be permitted to fill up the lacunae left by the plaintiff while leading evidence. He further submits that no application for the additional evidence should have been allowed as held by Supreme Court in **Union of India Vs. Ibrahim Uddin and another, 2012 (8) SCC 148** and an application for additional evidence under Order XLI Rule 27(b) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') could only be considered when the case was finally taken up for hearing. He submits that the Court was required to first hear the appeal and thereafter, decide application under Order XLI Rule 27 of the CPC.

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

5. In this case, the First Appellate Court has come to a conclusion that examination of three witnesses already noted above is necessary for proper adjudication of the case. Order XLI Rule 27 of the CPC continues to exist in order to enable the Appellate Court to allow additional evidence. Hence, it is not appropriate to hold that the plaintiff cannot be permitted to fill up the lacunae. In fact, use of expression 'fill up the lacunae' is misnomer. The permission to lead additional evidence is granted to remove deficiency, if any, in order to clear the doubt. The Court is expected to decide the cases in accordance with law. If any deficiency is found in the evidence



led by the parties, the Court can permit to remove the deficiency in order to cure a curable defect. That is the reason Order XLI Rule 27 of the CPC has been retained by the Parliament, though, Order XVIII Rule 17-A of the CPC was deleted. Hence, there is no substance in the first argument of the learned counsel representing the appellant.

6. As far as the second submission of the learned counsel representing the appellant, it may be noted that the Supreme Court in para 37 has not laid down that no application for additional evidence should be allowed. The Court has only held that the discretion vested in the Appellate Court is to be exercised judicially taking into consideration the relevance of the document and the circumstances under which such evidence could not be led. In this case, the First Appellate Court has given valid reasons to allow the application. Hence, the judgment relied upon by the learned counsel representing the appellant in *Ibrahim Uddin's case (supra)* is not applicable.

7. The last submission of the learned counsel representing the appellant is with respect to the stage at which the application should have been considered. In this case, the First Appellate Court finally heard the arguments. While evaluating the entire case, the First Appellate Court came to the conclusion that permission is required to be granted to the plaintiff to lead additional evidence.

8. Hence, the First Appellate Court has not erred in allowing the application, however, there is a patent error in the order passed by the First Appellate Court. Instead of remitting the case back to the trial Court, the Appellate Court could have either itself permitted the plaintiff to record evidence or sought a report from the trial Court. The learned counsel



representing the respondent No.1 does not have any serious objection to the aforesaid position.

9. Consequently, the order of remitting the matter back to the trial Court is set aside while upholding the order permitting the plaintiff to lead evidence. The first appeal is restored to its original number. The First Appellate Court would either permit the parties to record evidence or seek report from the trial Court.

10. The parties through their learned counsel are directed to appear before the First Appellate Court on 19.07.2024

11. With these observations, the appeal is disposed of.

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

May 27th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

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