

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****103****RSA-2783-1993 (O&M)****Date of Decision : 29.01.2025**

Kumari Radhika @ Meena Chaudhry Sharma

....Appellant

VERSUS

State of Haryana and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate for the appellant.

Mr. Pritam Singh Saini, Sr. Addl. AG Haryana with
Mr. Suneel Ranga, DAG Haryana for the respondents.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 30.04.1991 passed by the Trial Court and the judgment and decree dated 14.10.1993 passed by the First Appellate Court.

2. Learned senior counsel appearing on behalf of the appellant contends that before the Trial Court, at the time of filing of the civil suit, an application was filed for dispensing with the requirement of serving a notice under Section 80 of the Code of Civil Procedure, 1908, which was allowed after hearing the defendant-respondents on 17.05.1986. Learned senior counsel would further contend that the First Appellate Court dismissed the appeal only on the ground that no notice under Section 80 CPC was served upon the defendant-respondents prior to filing of the suit and hence directed that the matter may be remanded to the Trial Court and the Trial Court to

return the plaint in accordance with the provisions of Section 80 CPC. A review was also filed, which was dismissed vide order dated 23.10.1993.

3. Learned State counsel appearing on behalf of the respondents is not in a position to deny the fact that the Trial Court vide order dated 17.05.1986 had allowed the application and permitted the filing of the suit dispensing with the service of notice under Section 80 CPC.

4. In view of the above, the judgment and decree dated 14.10.1993 passed by the First Appellate Court cannot be sustained and the same is accordingly set aside. The matter is remanded to the successor First Appellate Court concerned to decide the same in accordance with the law.

5. An application under Order XLI Rule 27 CPC has been filed, which has not been adjudicated upon by this Court in view of the above order. However, if so advised, the appellant would always be at liberty to approach the First Appellate Court. In case any such application is filed before the First Appellate Court, the same be decided in accordance with law.

6. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

29.01.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO