



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 9 of 2025 (O&M)

Date of Decision: 07.04.2025

Rajender Singh alias Rajender Kumar and Others

... Appellant(s)

Versus

Indian Oil Corporation Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Nishant Chauhan, Advocate
for the appellant(s).

Mr. Randeep Partap Singh, Advocate
for respondent No.1.

Anil Kshetarpal, J.

1. On 25.02.2025, the following order was passed:-

“Learned counsel representing the appellants inter alia contends that the First Appellate Court has erred in remitting the matter back to the lower Court on the ground that the property is required to be demarcated. He submits that the First Appellate Court could have got the property demarcated by nominating a Local Commissioner.

Notice be issued to respondent No.1 with liberty to serve him through his counsel Sh. Adarsh Sharma, Advocate, District Court Panipat.

Process dasti only.

List, in the urgent list, on 27.03.2025.”

2. Heard the learned counsel representing the parties.
3. The plaintiff has filed a suit for the grant of decree of permanent injunction restraining the defendant No.1 from demolishing the existing construction over the suit property or interfering in his peaceful possession.
4. The defendants contested the suit on the ground that the property has already been acquired by the Indian Oil Corporation Limited in the year 1993-94 and the plaintiff has unauthorizedly encroached upon the same. The Trial Court dismissed the suit by an elaborate judgment. The First Appellate Court chose to remit the matter back to the Trial Court to decide the suit afresh after getting the property demarcated from the senior revenue official.
5. The enabling power of the Appellate Court to remit the matter back to the Trial Court is regulated by Order XLI Rule 23 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) and it has been explained by the 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. In this case, Order XLI Rule 23A CPC shall be applicable which requires that the Appellate Court should set aside the judgment of the Trial Court on merits and record a finding that the retrial of the case is

necessary. In the present case, the First Appellate Court has failed to record these two findings.

7. Keeping in view the aforesaid facts and discussion, the present appeal is allowed and the First Appellate Court's order remitting the matter back to the Trial Court is set aside. The first appeal, filed by the appellants, is ordered to be restored at its original number. It shall be open to the First Appellate Court to get the property demarcated from the senior revenue official. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 12.05.2025.

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

(Anil Kshetarpal)
Judge

April 07, 2025
"DK"

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