

130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 25.04.2025

1.

SAO-49-2023 (O&M)

Kiran Sarangal and another

...Appellants

Vs.

M/s Allround Sporting Balls and another

...Respondents
2.

SAO-50-2023 (O&M)

Anant Ram Sarangal and another

...Appellants

Vs.

M/s Balwant Brothers and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anish Setia, Advocate
for the appellants.

Mr. Akshay Bansal, Advocate
for respondents No. 1 and 2.

ANIL KSHETARPAL, J. (Oral)

1. With the consent of learned counsel representing the parties, two connected second appeals against the First Appellate Court's order remitting the matter back to the trial Court for fresh decision shall stand disposed of by this common order.

2. There are following two partnership firms:-

I. M/s Allround Sporting Balls

The names of its partners alongwith their shares are as below:-

Kiran Sarangal	45%
Ajay Sarangal	10%
Sunita Sarangal	45%



II. M/s Balwant Brothers

The names of its partners alongwith their shares are as below:-

Anant Ram Sarangal	25%
Ajay Sarangal	25%
C.L. Sarangal	25%
Munish Sarangal	25%

3. Two suits were filed for rendition of accounts, in which, preliminary decree was passed as the defendants agreed to render the accounts as per balance-sheet dated 31.03.2003. The preliminary decree in both the suits were passed on 02.09.2008. The proceedings for final decree were initiated. The Executing Court amalgamated immovable properties of both the firms and thereafter proceeded to divide them by metes and bounds. Against the final decree, two appeals were preferred. The First Appellate Court found that the process adopted to divide the property and rendition of accounts is not correct, hence, remitted the matter back to the trial Court.
4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.
5. Learned counsel representing the appellants submits that the Appellate Court was well within its power to take corrective measures to separately divide the properties of both the firms rather than amalgamating the properties of two firms. He submits that the Appellate Court cannot remit the matter back unless the requirements of Order 41 Rule 23-A of the Code of Civil Procedure, 1908, are fulfilled.
6. *Per contra*, learned counsel representing the respondents submits that there are multiple errors in the final decree passed by the Court.
7. The enabling power of the First Appellate Court to remit the



matter back to the lower Court is regulated by Order 41 Rule 23 and 23-A of the Code of Civil Procedure, 1908, which has been explained by the Hon'ble 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 XLI 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 XLI 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 XLI 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.”

8. It is evident that the First Appellate Court can remit the matter back to the lower Court only after setting aside the judgment of the trial Court on merits and after coming to conclusion that re-trial of the case is necessary. The First Appellate Court has power to appoint a Local Commissioner and initiate division of the properties of two firms separately. If there was any other error, the Appellate Court could have corrected the same. In this case, the preliminary decree was passed on 02.09.2008, i.e. nearly 17 years have passed. The Appellate Courts should desist from remitting the matter back unless it is necessary. This is the mandate under Order 41 Rule 23-A of the CPC.
10. Keeping in view the aforesaid discussions, the impugned order passed by the First Appellate Court in both the appeals are set aside while ordering restoration of the first appeals.
11. The parties through their learned counsel are directed to appear before the First Appellate Court on 23.05.2025.
12. Both, the appeals are disposed of.
13. All the pending miscellaneous applications, if any, are also disposed of.

25.04.2025
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No