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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(111)

CR-5869-2019

Date of Decision: - 11.02.2025

Kulwant Singh and others**....Petitioners****Versus****Mohindro @ Mohinder Kaur (deceased) through LRs and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Aakash Singla, Advocate, for the petitioners.

Mr. Vikas Gupta, Advocate, for respondent No.1.

**********VIKAS BAHL, J. (ORAL)**

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 17.08.2019 (Annexure P-3) passed by the Additional District Judge, Tarn Taran, vide which the application for leading additional evidence under Order 41 Rule 27 CPC of the plaintiff/respondent No.1 has been allowed.

2. Learned counsel appearing for the petitioners has submitted that at any rate, the impugned order deserves to be set aside on the short ground that the application under Order 41 Rule 27 and Section 151 CPC filed by the respondent No.1 has been allowed prior to deciding the main appeal. It is further submitted that it has repeatedly been held by the Hon'ble Supreme Court and by this Court that the application under Order



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41 Rule 27 CPC has to be decided alongwith the main appeal.

3. Learned counsel appearing for respondent No.1 has submitted that in case the impugned order is to be set aside on the said aspect, the same should not be construed as an expression on the merits of the application and the application should be considered by the Court independently at the time of deciding the main case.

4. This Court has heard learned counsel for the parties and has perused the paper-book.

5. The Hon'ble Supreme Court of India in the case titled as "**State of Rajasthan Vs. T. Sahani**, reported as 2001(10) SCC 619 while relying upon an earlier judgment of the Hon'ble Supreme Court in the case of "**K. Venkataramiah Vs. Seetharama Reddy**", AIR 1963 Supreme Court 1526, had observed that the application under Order 41 Rule 27 CPC should be decided along with the appeal and taking a view on the said application before hearing of the appeal was not appropriate and accordingly, the impugned order vide which challenge was made to the decision of the High Court, on the application under Order 41 Rule 27 CPC as well as on another application under Order 6 Rule 17 CPC, which were decided prior to deciding of the appeal was set aside and the High Court was directed to consider the appeal and the applications afresh in accordance with law. The relevant portion of the said judgment is reproduced as under: -

"4. It may be pointed out that this Court as long back as



*in 1963 in **K. Venkataramiah v. Seetharama Reddy, AIR 1963 Supreme Court 1526**, pointed out the scope of unamended provision of Order 41, Rule 27(c) that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of the record as it was, and so, it could not be required additional evidence to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the Court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need to be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to be Court to look into the documents and for that purpose amended provision of Order 41, Rule 27(b), C.P.C. can be invoked. **So the application under Order 41, Rule 27 should have been decided along with the appeal. Had the court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view would be inappropriate.....***

6. Similarly, a Co-ordinate Bench of this Court in the judgment dated 13.08.2009 passed in case titled as “**Surjit Kaur and another Vs. Bhupinder Singh Waraich**, reported as 2009(4) RCR (Civil) 563, had held as under: -

*“The learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in **M/s Eastern Equipment & Sales Ltd. v. Ing. Yash Kumar Khanna, 2008(4)***



RCR (Civil) 508: 2008(5) RAJ 565 : 2008(3) PLR 689, wherein the Hon'ble Supreme Court has been pleased to lay down as under:-

*"5. We have heard learned counsel for the parties and after considering the facts and circumstances of the present case, we are of the view that in order to decide the pending appeal in which the application under Order 41 Rule 27 of the Civil Procedure Code was filed ought to have been taken by the appellate Court along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Civil Procedure Code. **In that view of the matter and without going into the merits as to whether the application under Order 41 Rule 27 of the Civil Procedure Code was rightly rejected by the Appellate Court as well as by the High Court, we set aside the order of the High Court as well as of the appellate Court rejecting the application under Order 41 Rule 27 of the Civil Procedure Code and we direct that the appellate Court shall decide the pending appeal along with the application under Order 41 Rule 27 of the Civil Procedure Code on merits within a period of three months from the date of supply of a copy of this order to the appellate court.** The appeal is allowed to the extent indicated above. There will be no order as to costs.*

*6. The view that we have expressed can be supported by a decision of this Court in the case of **Jaipur Development Authority v. Kailashwati Devi, 1997(4) RCR (Civil) 97 : 1997(7) SCC 297.***

7. We make it clear that we have not gone into the merits of the application under Order 41 Rule 27 of the Civil Procedure Code which is kept open to be decided by the appellate court while deciding the appeal."

In view of the authoritative pronouncement by the Hon'ble Supreme Court, the impugned order is set aside with a direction to the learned lower appellate Court to consider the application for additional evidence along with the main appeal, at the time of arguments."



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7. In the present case, it is not in dispute that the application under Order 41 Rule 27 CPC read with Section 151 CPC has been decided by the 1st Appellate Court prior to deciding the main appeal, thus, the impugned order dated 17.08.2019 deserves to be set aside on the said short point alone.

8. Keeping in view the above-said facts and circumstances and the law laid down in the above-said judgments, the present revision petition is partly allowed and the impugned order dated 17.08.2019 is set aside and the 1st Appellate Court is directed to consider the application under Order 41 Rule 27 CPC read with Section 151 CPC for additional evidence afresh along with the main appeal and at the time of deciding of the main appeal.

9. It would be relevant to mention that this Court has not considered the merits of the application filed under Order 41 Rule 27 CPC nor has set aside the impugned order upon merits and the same has been set aside only on the short ground mentioned hereinabove and thus, the 1st Appellate Court would decide the appeal alongwith the application under Order 41 Rule 27 CPC together, on merits.

(VIKAS BAHL)
JUDGE

February 11, 2025
naresh.k

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No