



SAO-35-2022(O&M)

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

**SAO-35-2022(O&M)
Date of decision:24.03.2025**

Lakhbir Singh

..Appellant

Versus

Sukhdev Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S.Batth, Advocate for the appellant

Mr. C.L.Verma, Advocate for respondent no.1

ANIL KSHETARPAL, J. (Oral)

1. Defendant no.2 assails the correctness of the First Appellate Court's order remitting the matter back to the trial court for fresh decision. The First Appellate Court has remitted the matter back to the lower court only because an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') filed by the plaintiff was allowed.

2. The scope and ambit of Order XLI Rule 23A 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



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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.”



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3. It is evident on a careful reading of Order XLI Rule 23 A CPC that the Appellate Court can remit the matter back to the lower court only after setting aside the lower court's judgment on merits and on forming an opinion that re-trial of the case is necessary. In this case, the First Appellate Court has not recorded any such finding. It may be noted here that this Court is not interfering in the order permitting the plaintiff to lead additional evidence, however, this cannot be the only ground to remit the matter back. Hence, the order of the First Appellate Court remitting the matter back to the lower court is set aside to that extent only.

4. With these observations, the appeal is allowed. The first appeal is restored to its original number. The parties through their learned counsels are directed to appear before the First Appellate Court on 24.04.2025.

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

(ANIL KSHETARPAL)
JUDGE

24.03.2025

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No