

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

SAO-99-2016 (O&M)
Date of decision: 21.03.2025

SHRI RAM KISHAN PURI

..Appellant

Versus

CANARA BANK

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhilaksh Grover, Advocate
for the appellant

Mr. S.S. Kamboj, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The defendant assails the correctness of First Appellate Court order remitting the matter back to the trial Court for fresh decision after permitting the plaintiff (Canara Bank) to produce evidence. The plaintiff filed a suit for recovery of Rs.38,10,700/- on the ground that defendant (appellant) was a former employee of the bank. He has failed to account for the amount received from the depositors. Hence, embezzled the amount. FIR No.80 dated 02.03.2004, was also registered. The defendant denied the embezzlement. After the issues were culled out, the parties were permitted to lead evidence and the trial Court partly decreed the suit. It was held that the plaintiff will be entitled to recover the amount if the appellant was found guilty. Two cross-appeals were filed before the First Appellate Court. The application filed by the bank under Order XLI of the Code of Civil Procedure, 1908, for permission to produce copy of the FIR in additional evidence was allowed by the First Appellate Court, however, the First Appellate Court found that the bank examined an official who did not bring

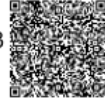


the complete record, hence, the Court remitted the matter back to the trial Court.

2. The enabling power of the Appellate Court to remit the matter back to the lower Court is regulated by Order XLI Rule 23 and 23A of the Code of Civil Procedure, 1908, which 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.”

3. The enabling power of the First Appellate Court to remit the matter back mandates that the impugned order is set aside on merits and retrial of the case is considered necessary. There is no dispute with regard to enabling power of the First Appellate Court to requisition any evidence/material or examine any witness, however, this cannot be the ground to set aside the trial Court's judgment and remit the matter back for consideration.

4. The Appellate Court is required to set aside the impugned judgment on merits and remit the matter back to the lower Court only after forming an opinion that the retrial of the case is necessary. These two conditions are a *sine qua non* for ordering remand of the case back to the lower Court.



5. In this case, the First Appellate Court has failed to fulfil both the conditions, hence, the judgment of the First Appellate Court only to this extent is set aside and directions are issued for fresh decision.
6. It is clarified that the observations of the Appellate Court for permitting the bank to produce certain documents and examine a witness are not being disturbed.
7. The parties through their learned counsel are directed to appear before the First Appellate Court on 22.04.2025.
8. With these observations, the appeal is disposed of.
9. All the pending miscellaneous applications, if any, are also disposed of.

March 21st, 2025

Ayub

(ANIL KSHETARPAL)
JUDGE

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