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

RSA No.4167 of 2019 (O&M)

Date of decision : 20.04.2026

RAM PAL CHANDER AND ANOTHER

....Appellants

Versus

SATYA AGGARWAL AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Vijayveer Singh, Advocate and
Mr. Abhishek Shukla, Advocate for the appellants.

Mr. Dinesh Gupta, Advocate for respondents No.1 to 3.

PANKAJ JAIN, J. (ORAL)

CM No.11602-C of 2019

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 243 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 243 days in filing the instant appeal is hereby condoned.

Main Appeal

Defendants are in appeal.



2. Plaintiff filed suit seeking decree of declaration to the effect that defendants are in unauthorized and illegal possession of the suit property. Further relief of permanent injunction was sought to the effect that defendants No.1 to 4 be restrained from handing-over possession to defendant No.5.

3. Suit was resisted by the defendants. They filed counter-claim seeking decree of specific performance pleading oral agreement to sell dated 15.12.1995.

4. Suit filed by the plaintiff was dismissed.

5. Counter-claim filed at the behest of the defendants, was allowed vide judgment and decree dated 28.11.2011 passed by the Court of the First Instance.

6. Plaintiff filed appeal.

7. The Ld. Lower Appellate Court allowed the appeal setting aside the judgment & decree passed by the Court of the First Instance, observing as under:

“18. After hearing rival contention raised by learned counsel for the parties, this court has come to the conclusion that the material question which was not resolved by learned trial court i.e documents tendered by respondents i.e Ex.P.1to Ex.P.369. It is not disputed fact that when these documents were tendered by the respondent then learned counsel for the appellant objected on it and objection was kept open by learned trial court. This court has further perused the order dated 22.10.2008, which is necessary to re produced as under:

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“Further, no provision has been shown regarding de-exhibiting the documents already exhibited. It is pertinent to mention here that at the time of tendering those documents also the observation has been made that “objection is kept open, to be decided at the time of arguments. “So, obviously the evidentiary value of such document so exhibited shall be seen at the time of evaluation of documents at the time of arguments. So, the prayer for de-exhibiting the documents tendered in the evidence of Sh. R.P.Chandra is hereby declined as such with this observation.”

It means that again learned trial court held in this order that whether these documents are admissible or not, it will be decided at the time of final arguments. This court has perused the judgment dated 28.11.2011 of the learned trial court and found that the learned trial court has nowhere decided the question which was kept open i.e objections on exhibiting the documents. Learned trial court rather treated all the documents are per se admissible and as such proved to decide the controversy. So, this court is of the considered view that it is a fit case which should be remanded back to the learned trial court to decide the matter afresh after deciding whether exhibits on which the objection was kept open regarding its exhibiting and after deciding this question whether these documents are per se admissible or not. So far as this court has perused the documents i.e. Ex.P.348 to Ex.P.369, these documents are per se admissible documents as these documents are related copies of electricity bills and receipts of payment to the electricity department. Rest of the documents Ex.P.1 to Ex.P.347 are not per se admissible rather these documents are required to prove by way of examining the witnesses as such kind of bills are easily available in the market.

19. Due to the reasons stated herein before, the appeal is allowed and the impugned judgment and decree dated 28.11.2011 is hereby set aside and the present case is hereby remanded back to the learned lower court and the learned trial court is directed to



decide the matter afresh after deciding controversy regarding de-exhibiting the documents Ex.P.1 to Ex.P.347 without prejudicing of the finding given by this court. Both the counsels for the parties are directed to appear before the concerned court 22.10.2018. Decree sheet be prepared accordingly. A copy of this judgment alongwith the trial court record be sent back and the appeal file be consigned to the records after due compliance.”

8. Ld. Senior Counsel appearing for the appellants submits that the remand order passed by the Lower Appellate Court neither satisfies the conditions enumerated under Order XLI Rule 23 and 23A nor those under Order XLI Rule 25 CPC. He relies upon ratio of law laid down by the Supreme Court in the case of **P. Purushottam Reddy vs. M/s Pratap Steels Ltd., (2002)2 SCC 686**.

9. Per contra, counsel for the respondents submits that it is a case wherein the appellants are in unauthorized illegal possession of the property owned by the plaintiffs.

10. I have heard counsel for the parties and have gone through records of the case.

11. The Code of Civil Procedure provides the Appellate Court with the powers to remand the *lis* but the same has to satisfy the conditions of the provisions governing power of remand as enumerated under Order XLI Rule 23A and Order XLI Rule 25 CPC.

12. In order to appreciate the arguments raised by counsel for the rival parties, it will be apt to peruse the following provisions contained in Order Order XLI Rule 23 & 23A and Order XLI Rule 25 CPC:



“23. Remand of case by Appellate Court.—Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases.—Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor 1 [within such time as may be fixed by the Appellate Court or extended by it from time to time].”



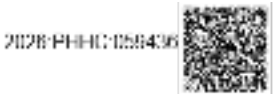
13. The aforesaid provisions came up for consideration before Supreme Court in *P. Purushottam Reddy's* case (supra). Laying down the parameters to test the legality and propriety of the orders of remand and the need for the Appellate Courts to resist the temptation of passing unwarranted order of remands, Supreme Court observed as under:

7. 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 Civil Procedure Code by Civil Procedure Code Amendment Act 1976, there were only two provision contemplating remanded 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 issued 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 inasmuch 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 therefor 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 Civil Procedure Code 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 41 of the CPC. In cases where additional evidence is required to be taken in the event of any one of the clauses 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 Supreme Court 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 41 Rule 31 of the Civil Procedure Code 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.

14. In view of the aforesaid ratio laid down by the Supreme Court, it is evident that prior to passing of the impugned order, Appellate Court needs to test the judgment passed by the Trial Court on merits and formulate an opinion for retrial of the suit.



14.1. Applying the aforesaid principles to the present case, this Court finds that the Lower Appellate Court neither dealt with the reasoning recorded by the Trial Court, nor spelled out any reasons necessary for retrial of the suit. The objection raised w.r.t. exhibition of document, cannot be a ground to remand the suit. The Lower Appellate Court instead of remanding the matter to the Trial Court should have decided the issue regarding exhibition of document itself and tested the judgment passed by the Court of the First Instance.

15. In view of above, this Court finds that the impugned judgment cannot be sustained and needs to be set aside.

16. The matter is remanded back to the Lower Appellate Court to decide the appeal afresh in accordance with law.

17. Needless to say, since the parties are at *lis* since 1999, this Court is sanguine that the Lower Appellate Court shall decide the appeal afresh within **three months** from the date of receipt of certified copy of this Court.

18. The instant appeal is disposed off accordingly.

19. Pending application, if any, shall also stand disposed off.

April 20, 2026
Dpr

(Pankaj Jain)
Judge

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