



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

116

SAO-57-2018 (O&M)  
Date of decision: 25.04.2025

CHARAN SINGH

..Appellant

Versus

SAHIB RAM SEHRAWAT AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Gupta, Advocate  
Ms. Ruchi Jain, Advocate  
Ms. Jasneen Kaur, Advocate  
for the appellant.

Mr. B.S. Rana, Sr. Advocate  
with Mr. Nayandeep Rana, Advocate  
for respondents.

**ANIL KSHETARPAL, J(Oral)**

1. The defendant assails the correctness of First Appellate Court's order remitting the matter back to the trial Court for fresh decision on the following two grounds:-

i. The trial Court has failed to discuss documents Ex.P1/23 to P1/41.

ii. Plaintiff No.1 has claimed that he is power of attorney holder of plaintiff No.2 but no power of attorney has been produced.

2. Patently, the order passed by the First Appellate Court is perverse.

3. 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.”*

4. The First Appellate Court is the last Court of fact and law. The First Appellate Court is not debarred from considering the evidence, which has been led by the parties even if it has not been considered by the trial Court. The Supreme Court has held that power to remit the matter back to the lower Court should be exercised only within the parameter laid down in Order XLI Rule 23 and 23A of the ‘CPC’.

5. In this case, Order XLI Rule 23 shall not be applicable because plaintiffs suit was not dismissed on the preliminary issue.

6. Hence, Order XLI Rule 23A shall be applicable, which requires the Appellate Court to set aside the judgment of the trial Court on merits and remit the matter back only after coming to the conclusion that the retrial of the case is necessary. It is evident that the First Appellate Court has neither set aside the judgment of the trial Court on merits nor has recorded a finding that the retrial of the case is necessary. Moreover, it is evident that the plaintiffs lost in the previous round of litigation upto the Supreme Court. Thereafter, objection petition was filed in the execution petition, which was also dismissed. Subsequently, the plaintiffs filed independent suit for



declaration claiming easementary right, which has been dismissed by the trial Court. The litigation between the parties have to be decided expeditiously. The parties cannot be permitted to indulge in multiple rounds of litigation.

7. Though, this Court does not express any final opinion on the aforesaid question, however, the facts of this case have compelled the Court to make such *prima facie* observation.

8. Consequently, the impugned order passed by the First Appellate Court is set aside while directing the First Appellate Court to decide the appeal within a period of two months, from today.

9. The parties through their learned counsel are directed to appear before the First Appellate Court on 23.05.2025.

10. Disposed of.

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

**April 25<sup>th</sup>, 2025**

*Ayub*

**(ANIL KSHETARPAL)  
JUDGE**

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