

116

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

SAO-78-2018 (O&amp;M)

Date of decision: 05.05.2025

GURDEV KAUR (DECEASED) THROUGH LRS. &amp; ORS.

..Appellants

Versus

PAWAN KUMAR AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

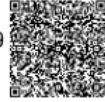
Present: Mr. Sanjeev Kumar Arora, Advocate  
for the appellants.

**ANIL KSHETARPAL, J(Oral)**

1. The plaintiff assails the correctness of First Appellate Court's order remitting the matter back to the trial Court for fresh decision after verifying whether proper Court fee has been paid by the plaintiff or not.

2. The plaintiff filed a suit for recovery alleging that he entered into agreement to sell in favour of defendants agreeing to sell his land measuring 16 kanals and 17 marlas at the rate of Rs.71,00,000/- per acre, however, three sale deeds were got executed on payment of half of the agreed amount, however, the defendants failed to pay the remaining sale consideration as per the agreement to sell. The defendants did not contest the case but the trial Court has dismissed the case. The plaintiff filed the appeal, which as already noticed has been remitted back.

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. Before remitting the matter back to the lower Court, the Appellate Court is required to not only set aside the findings of the trial Court on merits but remit the matter back only after recording a finding that retrial of the case is considered necessary.

5. The deficiency in Court fee, if any, is a curable defect. If the Appellate Court was of the opinion that there was any deficiency in payment of Court fee, it should have called upon the plaintiff to make it good, however, this cannot be made the only reason to remand the case back to the lower Court.

6. Consequently, the impugned order passed by the First Appellate Court is set aside while restoring the first appeal to its original number.

7. The appellant through his learned counsel is directed to appear before the First Appellate Court on 29.05.2025.

8. Disposed of.

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

**May 05<sup>th</sup>, 2025**

*Ayub*

**(ANIL KSHETARPAL)  
JUDGE**

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