



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 36 of 2019 (O&M)

Date of Decision: 24.04.2025

Amtoj Singh

... Appellant(s)

Versus

Sukhchain Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Manu Loona, Advocate
for the appellant(s).

Mr. Sandeep Khunger and Mr. Saksham Khunger, Advocates
for the respondent.

Anil Kshetarpal, J.

CM-9114-CII-2019

1. For the reasons stated in the application, the same is allowed and delay of 35 days in refiling the appeal is condoned.

SAO-36-2019

2. The plaintiff assails the correctness of the First Appellate Court's order remitting the matter to the Trial Court for fresh decision after permitting the defendant to amend the written statement.

3. The plaintiff has filed a suit for specific performance of agreement to sell with consequential relief of permanent injunction. The defendant contested the suit on the ground that the plaintiff is a Commission Agent and has obtained his signatures on the blank papers as security for repayment of loan which have been subsequently used for fabricating the

agreement to sell. The Trial Court ordered refund of earnest money. In the first appeal, the defendant filed an application for permission to amend the written statement in order to highlight that on 27.02.2009, the land comprised in khasra No. 107 killa No. 20 (6-8) was bifurcated into two parts i.e. 20/1(2-11) and 20/2 (3-17) of khasra No. 107. It was asserted that on the date of agreement to sell i.e. 17.12.1999, killa No. 20/2 was not in existence. The application for amendment was allowed and the First Appellate Court remitted the matter back to the Trial Court.

4. It has been disclosed that during the pendency of the proceedings before this Court, the Trial Court has also recorded some *prima facie* finding on an application under Section 340 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”).

5. The enabling power of the Appellate Court to remit the matter back to the Trial Court is regulated by Order XLI Rule 23 and 23A of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) and it 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.”

6. It is evident that the First Appellate Court has neither set aside the judgment of the Trial Court on merits nor come to a conclusion that retrial of the case is necessary. The First Appellate Court has only observed

that in view of the amended written statement, additional issue will be required to be framed and the parties will have to be given an opportunity to lead evidence. However, as per the order Order XLI Rule 25 CPC, the First Appellate Court is entitled to frame additional issue and seek report from the Trial Court or call upon the parties to lead evidence. However, this cannot be a ground to remit the matter back to the Trial Court. On this limited aspect, the impugned order passed by the First Appellate Court is set aside. It shall be open to the First Appellate Court to frame an additional issue and either seek report from the Trial Court or call upon the parties to lead evidence. Thereafter, the First Appellate Court will decide the case in accordance with law. On the insistence of the learned counsel representing the respondent, it is clarified that this Court is not interfering with the order passed by the First Appellate Court allowing the defendant to amend the written statement.

7. With the observations made above, the present appeal is disposed of. The parties, through their learned counsel are directed to appear before the First Appellate Court on 23.05.2025. It shall be open to the First Appellate Court to summon the findings recorded by the Trial Court on the application under Section 340 Cr.P.C.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 24, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No