



SAO-42-2024 (O&M)

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

SAO-42-2024 (O&M)

Date of decision: 09.01.2025

Mehmood

..Appellant

Versus

Baskari

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate for the appellant

Mr. Vinay Kumar Pandey, Advocate for the respondent

ANIL KSHETARPAL, J. (Oral)

1. This Second Appeal against the impugned order passed by the First Appellate Court has been filed by the defendant. The First Appellate Court has remitted the matter back to the trial court to decide the application for permission to amend the plaint filed by the plaintiff before the First Appellate Court and if the application is allowed then to decide the case afresh. Evidently the aforesaid order passed by the First Appellate Court is against the statutory provision of Order XLI Rule 23 and Rule 23 A of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

2. In **P.Purushottam Reddy and Another v. Pratap Steels Ltd. (2002) 2 SCC 686**, the Supreme Court has explained the aforesaid provision 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

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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

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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 First Appellate Court appears to have overlooked the statutory provision. Remitting the matter back to the trial court can only be done in accordance with the provisions of Order XLI Rule 23 and Rule 23A CPC. Mere filing of an application for permission to amend the plaint cannot entail remitting the matter back to the trial court. In this case, the trial court decreed the suit by a detailed judgment after allowing the parties to lead evidence. The defendant filed the appeal. During the pendency of the appeal, the plaintiff filed an application for amendment in order to



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incorporate certain parcel of land. The First Appellate Court held that such application is to be dealt with by the trial court and then remitted the matter back to the trial court while setting aside the judgment of the trial court. The operative part of the judgment reads as under:-

“5. This application is to be dealt with by the trial Court because if the application is allowed then the plaint as well as written statement are to be amended which would lead amendment in the decree itself.

6. Resultantly, the impugned judgment and decree are recalled and set aside. The case is remanded back to the trial Court with direction to decide the application for amendment filed by the respondent-plaintiff and if the application is allowed then to decide the case afresh. There is no order as to costs. Trial Court record be sent back along with copy this order. File be consigned to record-room after due compliance.”

3. Keeping in view the law laid down by the Supreme Court in **P.Purushottam Reddy’s case (supra)**, the impugned order passed by the First Appellate Court is set aside and the first appeal filed by the defendant is restored to its original number. The First Appellate Court is directed to proceed with the case in accordance with law. The parties through their learned counsels are directed to appear before the First Appellate Court on 10.02.2025.

4. Accordingly, the appeal stands allowed.

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

09.01.2025

rekha

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(ANIL KSHETARPAL)

JUDGE