



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

SAO-17-2025 (O&M)

Date of decision : 20.05.2025

Buta Singh(Deceased) through his legal heir ...Appellant

Vs.

Om Dutt (Deceased) through his legal heir ...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Rana, Advocate
for the appellant.

Mr. Gurcharan Dass, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)

1. On 25.04.2025, the following order was passed:-

C.M.No.8010-CII-2025

For the reasons mentioned in the application, which is supported by the affidavit, the delay of 17 days in filing the appeal is condoned.

CM stands disposed of.

MAIN

The learned counsel representing the appellant inter-alia contends that the First Appellate Court has erred in remitting the matter back to the trial court for a fresh decision on the following grounds:-

- (i) The plaintiff has sought possession, however, no specific issue has been framed;*
- (ii) The trial court has failed to return its finding;*
- (iii) Proper issues have not been framed.*

Prima-facie, the First Appellate Court has failed to consider the provisions of Order 41 Rule 23A of the Code of Civil Procedure, 1908.

Notice of motion, for 30-4-2025.

Liberty to serve the respondent through plaintiff's



counsel before the trial court.

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2. The correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision is assailed by the defendants.

3. The plaintiff filed a suit for declaration and mandatory injunction as well as possession, which was dismissed. Before the First Appellate Court, the plaintiff filed an application under Order XIV Rule 5, 1908 for framing additional issues, which was allowed and the First Appellate Court remitted the matter back to the trial Court.

4. The enabling power of the First Appellate Court to remit the matter back to the lower Court is regulated by Order XLI Rule 23 and 23-A of the Code of Civil Procedure, 1908(CPC), which has been explained by the Hon'ble 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 XLI 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 XLI 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 XLI 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.”

5. As per Order XLI Rule 23-A of the CPC, the First Appellate Court is required to set aside the findings of the trial Court on merits and remit the matter back to the lower Court only after coming to conclusion that retrial of the case is necessary. From reading of the impugned order passed by the First Appellate Court, it is evident that the First Appellate Court has failed to follow Order XLI Rule 23-A of the CPC. Moreover, under Order XLI Rule 25 CPC, the Appellate Court is entitled to frame additional issues, however, the matter is not required to be remitted back.

6. Consequently, the appeal is allowed. The impugned order passed



by the First Appellate Court is set aside while restoring the first appeal to its original number.

7. The parties through their learned counsel are directed to appear before the First Appellate Court on 02.07.2025.

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

(ANIL KSHETARPAL)
JUDGE

20.05.2025
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No