



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

**SAO-5-2017 (O&M)**

**Date of decision : 21.04.2025**

**Naresh Kumar and others**

**...Appellants**

**Vs.**

**Nirottam and others**

**...Respondents**

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Adarsh Jain, Advocate  
for the appellants.

Ms. Deepali Puri, Advocate  
for the respondents.

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**ANIL KSHETARPAL, J. (Oral)**

1. The plaintiffs assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision after allowing defendants No. 7 to file fresh written statement.

2. Defendant No. 7 is the mother of defendants No. 1 to 6.

3. The plaintiffs (appellants) filed a suit for declaration, redemption of mortgage with consequential relief of permanent injunction with respect to land measuring 18 kanals 06 marlas. Originally, defendant No. 7-Smt. Har Piari was not impleaded as defendant. On 12.06.2008, defendants No. 1, 2, 4 and 6 filed written statement without taking any objection that their mother has not been impleaded as party. The plaintiff filed an application for correction of the name of defendant No. 5 and to implead Smt. Har Piari as defendant, which



was allowed on 25.08.2012. Defendant No. 7 did not file any written statement and adopted the reply already filed by defendants No. 1, 2, 4 and 6. Subsequently, the plaintiff also filed an application for permission to amend the plaint in order to seek relief of possession, which was allowed. Amended written statement was filed by defendants No. 1, 2, 4 and 6, however, defendant No. 7 had never filed any written statement. Ultimately, the suit filed by the plaintiff was decreed. A joint appeal was filed on 07.04.2014 by defendants No. 1 to 7. Thereafter, defendants No. 1, 2, 4 and 6 filed an application for permission to amend the written statement, stating that the appellant No. 7-Smt. Har Piari has purchased a share in the suit land on 17.01.1996 from Sh. Nobat Singh. The Appellate Court allowed the application permitting defendants No. 7 to file written statement and remanded 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 41 Rule 23 and 23-A of the Code of Civil Procedure, 1908, 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. It is evident that neither the First Appellate Court has set aside the trial Court's judgment on merits nor it has come to a conclusion that re-trial of



the case is necessary. It is further evident that an application for permission to amend the written statement was filed by defendants No. 1, 2, 4 and 6. Defendant No. 7 never filed an application. The First Appellate Court has overlooked the fact that defendant No. 7 had opportunity to file written statement the moment she was impleaded as defendant in the year 2012. She again had opportunity to file written statement in the year 2014 when amended plaint seeking additional relief of possession was filed in the year 2014. These aspects were required to be considered by the Appellate Court before passing any order.

6. Consequently, the impugned order passed by the First Appellate Court is set aside with liberty to pass a fresh order in accordance with law.

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

8. The appeal is disposed of.

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

**21.04.2025**

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**(ANIL KSHETARPAL)**  
**JUDGE**

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