

GURDEV SINGH AND ORS.

v.

MEHNGA RAM AND ANR.

JULY 11, 1997

[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

*Code of Civil Procedure, 1908 : Section 115—Order XLI—Rule 27(b)—Additional evidence—Power of appellate Court—Revision—Power of High Court—Appellate Court—Final hearing of appellant's appeal—Application under Order XLI Rule 27(b)—Appellate Court felt that additional evidence was required to be produced as requested by appellants by way of examination of a hand writing expert—High Court in revision held that order of appellate Court was not sustainable—Appeal before Supreme Court—Held at the interim stage High Court should not have held that order was without jurisdiction—Order of High Court set aside—Appellate Court shall decide the appeal on merit.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4726 of 1997.

From the Judgment and Order dated 12.3.96 of the Punjab and Haryana High Court in C.R. No. 169 of 1996.

Munilal Verma, Devender Verma and Ms. Naresh Bakshi for the Appellants.

P.N. Puri for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel for the parties. The grievance of the appellants before us is that in an appeal filed by them before the learned Additional District Judge, Ferozepur, in an application under Order XLI Rule 27(b), Code of Civil Procedure (CPC) the learned Additional District Judge at the final hearing of the appeal wrongly felt that additional evidence was required to be produced as requested by the appellants by way of examination of a hand-writing expert. The High Court in the impugned

A order exercising jurisdiction under Section 115, CPC took the view that the order of the Appellate Court could not be sustained. In our view the approach of the High Court in revision at that interim stage when the appeal was pending for final hearing before the learned Additional District Judge was not justified and the High Court should not have interfered with the order which was within the jurisdiction of the Appellate Court. The reason is obvious. The Appellate Court hearing the matter finally could exercise jurisdiction one way or the other under Order XLI Rule 27 specially clause (b). If the order was wrong on merits, it would always be open for the respondent to challenge the same in accordance with law if an occasion arises to carry the matter in Second Appeal after an appellate decree is passed. But at this interim stage, the High Court should not have felt itself convinced that the order was without jurisdiction. Only on this short question, without expressing any opinion on the merits of the controversy involved and on the legality of the contentions advanced by both the learned counsel for the parties regarding additional evidence, we allow this appeal, set aside the order of the High Court. In the result, the Additional District Judge shall now decide the appeal on its own merits. We make it clear that the order of the learned Additional District Judge, Ferozepur dated 12.12.1995 shall now be complied with, subject to the liberty reserved to the respondent as aforesaid.

T.N.A.

Appeal allowed.