

Pt. Sant Ram Vs Pt. Sadhu Ram

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 28, 2003

Acts Referred: Civil Procedure Code, 1908 (CPC) & Order 41 Rule 9

Citation: AIR 2003 P&H 261 : (2003) 2 RCR(Civil) 255

Hon'ble Judges: V.M. Jain, J

Bench: Single Bench

Advocate: Ajay Lamba and Hemant Bassi, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

V.M. Jain, J.

This application under Order 41, Rule 9 read with Section 151, CPC has been filed by the appellant, in the main Regular

Second Appeal No. 332 of 2003, praying therein that the filing of the appeal before the lower appellate Court may be dispensed with and he may

be permitted to file the appeal directly in this Court.

2. This Regular Second Appeal is dated 13-1-2003 and was filed in this Court on 14-1-2003. The Registry of this Court returned the said Appeal

to the counsel for the appellant. With various objections, including the objection that the provisions of Order 41. Rule 9 of the revised CPC be

complied with. In pursuance of the aforesaid objection, raised by the Registry, the appeal was re-filed on 27-1-2003, along with the present

application under Order 41, Rule 9 read with Section 151, CPC. In this application, it has been alleged that in view of the urgency involved in the

matter, the appeal may be directly entertained by this Court and the requirement of filing the appeal before the lower appellate Court may be

dispensed with. The office has put up this application before me, along with the main Appeal.

3. After hearing counsel for the applicant-appellant and perusing the record, in my opinion, this application under Order 41. Rule 9, read with

Section 151, CPC, was not required to be filed by the applicant-appellant in this Court, I am further of the opinion that the Registry of this Court

could not have returned the Appeal to the counsel for the appellant with the objection that the provisions of Order 41, Rule 9 of the revised CPC

should be complied with. This is so, in view of the law laid down by the Hon"ble Supreme Court, in the case reported as Salem Advocate Bar

Association Vs. Union of India (UOI), (January part).

4. In Salem Advocate Bar Association Vs. Union of India (UOI), , it was observed by the Hon"ble Supreme Court that the amendments, made to

the CPC, by the amendment Act 46 of 1999 and amendment Act 22 of 2002, have been challenged. In the petition before the Hon"ble Supreme

Court, it was held by the Hon"ble Supreme Court that ""we do not find that the said provisions are in any way ultra vires the Constitution.

We have also gone through the provisions, by which amendments have been made and do not find any constitutional infirmity in the same"". It was

observed by the Hon"ble Supreme Court that the learned counsel for the petitioner had drawn the attention of the Hon"ble Supreme Court to

some of the amendments, which have been made, with a view to show that there may be some practical difficulties in implementing the same and

that some clarification may be necessary. Thereupon, the Hon"ble Supreme Court dealt with the various amendments, while dealing with the

amendment to Order 41, Rule 9. CPC, it was observed by the Hon"ble Supreme Court, as under :--

22. Lastly, Mr. Vaidyanathan drew our attention to Rule 9 which was inserted in Order 41, which reads as follows :--

9. Registry of memorandum of appeal,--(1) The Court from whose decree an appeal lies, shall entertain the memorandum of appeal and shall

endorse thereon the date of presentation and shall register the appeal in a book of appeal, kept for that purpose.

(2) Such book shall be called the register of appeal.

23. The apprehension was that this rule requires the appeal to be filed in the Court from whose decree the appeal is sought to be filed. In our

opinion, this is not so. The appeal is to be filed under Order 41, Rule 1 in the Court in which it is maintainable. All that Order 41, Rule 9 requires is

that a copy of memorandum of appeal which has been filed in the appellate Court should also be presented before the Court against whose decree

the appeal has been filed and endorsement thereof shall be made by the decreeing Court in a book called the Register of Appeals. Perhaps, the

intention of the Legislature was that the Court against whose decree an appeal has been filed should be made aware of the factum of the filing of

the appeal which may or may not be relevant at a future date. Merely because a memorandum of appeal is not filed under Order 41, Rule 9 will

not, to our mind, make the appeal filed in the appellate Court as a defective one.

5. From a perusal of the above, it would be clear that the apprehension with regard to the amendment in Order 41, Rule 9 was that this Rule

required the appeal to be filed in the Court from whose decree the appeal is sought to be filed. After considering the entire matter, it was held by

the Hon"ble Supreme Court that this was not so. It was further held that the appeal is to be filed under Order 41, Rule 1, CPC in the Court in

which it is maintainable. All that Order 41, Rule 9 requires is that a copy of memorandum of appeal, which has been filed in the appellate Court,

should also be presented before the Court against whose decree the appeal has been, filed. It was further held that perhaps, the intention of the

Legislature was that the Court against whose decree an appeal has been filed, should be made aware of the factum of the filing of the appeal. It

was further held that merely because a memorandum of appeal is not filed under. Order 41, Rule 9, will not make the appeal filed in the appellate

Court, as a defective one.

6. In view of the law laid down by the Hon"ble Supreme Court, in the above-mentioned authority, while considering the provisions of Order 41,

Rule 9, CPC, it would be clear that the memorandum of appeal has to be filed in the Court in which the appeal is maintainable, as required under

Order 41, Rule 1, CPC, and that merely because the memorandum of appeal has not been filed under Order 41, Rule 9, CPC, will not make the

appeal filed in the appellate Court as defective one. In this view of the matter, in my opinion, the Registry of this Court could not have raised the

objection that the provisions of Order 41, Rule 9 of the revised CPC, should be complied with. I am further of the opinion that the applicant-

appellant was not required to file the application under Order 41, Rule 9 read with Section 151, CPC, seeking permission to file the appeal

directly in this Court and dispensing with the requirement of filing the same before the lower appellate Court.

7. In view of the above, this application under Order 41, Rule 9 read with Section 151, CPC, stands disposed of accordingly.

A copy of this order shall be sent to the Registry, forthwith, for information and strict compliance.