
(2010) 02 P&H CK 0082
In the Punjab And Haryana At Chandigarh

Rajinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 158 PLR 80

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—Heard.

2. Undisputedly, the appeal was filed in the year 1982. Memo of appeal does not contain substantial questions of law as required u/s 100(3) of the Code of Civil Procedure. This Court vide order dated 24.5.1982, issued notices to the respondents. The order does not show that appeal was ever admitted. However, learned Counsel for the appellants states that as per the normal practice of this Court, the aforesaid order amounts to admission of the appeal. Be it as the case may be, no substantial question of law has been formulated by this Court. In RSA No. 888 of 1982 Kartar Singh and Anr. v. Tulsi (died), decided on 17.2.2010, same controversy arose. In paras No. 3 to 9 thereof, this Court has observed as under:

3. She further stated that non formulation of substantial question of law in the memorandum of appeal as well as at the time of admitting the appeal was because of dictum of the Full Bench of this Court in the matter Ganpat v. Smt. Ram Devi (1978) 80 P.L.R. 1 (F.B.). It was stated by both the Counsel that judgment passed by the Full Bench in the matter of Ganpat (supra) was overruled by the Hon'ble Apex Court in the matter of Kulwant Kaur and Ors. v. Gurdial Singh Mann (dead) by LR's and Ors. (2001) 128 P.L.R. 492 (S.C.). Hence, learned Counsel for the appellants argued that after the judgment of the Hon'ble

Apex Court in the case of Kulwant Kaur (supra), appellants should not be suffered for no fault of them and must be permitted to rectify the mistake by invoking Rule 2 or Order 41 C.P.C.

4. I have given my serious thought to the argument of learned Counsel appearing for the appellants. Undisputedly, judgment of Apex Court in Kulwant Kaur (supra) came in the year 2001. No step was taken by the appellant in nine years to formulate substantial questions of law in the memo of appeal by moving amendment in view of change of law. There should be some limit of negligence. Law does not help those who do not help themselves. Appellants were sleeping over the appeal for last nine years and now when appeal is being taken up, learned Counsel for the appellants started arguing that since appeal was admitted in the year 1982 without formulating substantial questions of law, hence, this Court should formulate questions of law now without insisting formulation of questions of law in the memo of appeal or in any case, by permitting the appellants, to formulate substantial questions of law in the memo of appeal by way of amendment.

5. Learned Counsel for the appellants has not moved any application seeking permission to amend the memo of appeal incorporating substantial questions of law and additional grounds therein under Rule 2 of Order 41 C.P.C.

6. Full Bench of this Court in the case Of Bikram Dass v. The Financial Commissioner, Revenue Punjab, Chandigarh and Ors. AIR 1975 P&H 1(1) has ruled that memorandum of appeal can be rejected at the subsequent stage also i.e. even after admission of appeal.

7. Rule 10 of Volume I Chapter 14 Part B of Punjab and Haryana High Court Rules and Order reads as under:-

10. Amendment after admission - When an appeal has been registered and a date has been fixed for hearing, the petition cannot be returned for amendment. The appeal must be disposed of in the regular manner by dismissal, or by a judgment affirming, varying or reversing the decree of the lower Court. If the appellant should desire to urge any ground of objection not set forth in the memorandum of appeal, he can, under the provisions of Order XLI, Rule 2, of the Code of Civil Procedure, do so only with the permission of the Court and such permission should ordinarily be applied for in writing some time before the date fixed for the hearing, under Order XLI Rule 12, of the Code, in order that the respondent may have sufficient opportunity of contesting the case on that ground, without the necessity of a postponement.

8. The same issue came before me in the matter of Bikkar Singh and Ors. v. Jalaur Singh and Ors. R.S.A. No. 861 of 1981 (O&M) decided on 16.02.2010, in which Ms. Alka Sarin, Counsel for the present appellants was also one of the Counsel for the appellants. In the appeal Bikkar Singh (supra), I have held:

Keeping in mind the dictum of the Hon''ble Apex Court in the matter of Uday

Shankar Triyar (supra) and Kailash (supra), it can very well be said that jurisdiction of this Court to permit the appellants to formulate substantial questions of law in the memo of appeal is not taken away, it can be exercised when facts and circumstances of that case permits, however, that latitude cannot be given in each and every case. Ordinarily no latitude can be given in the appeal which were filed after the judgment of the Hon''ble Apex Court in Kulwant Kaur's case (supra).

9. Since, no application has been moved seeking permission from this Court to amend the memorandum of appeal incorporating new ground and substantial questions of law therein, which ought to have been moved prior to the date of hearing as per Rule 10 of High Court Rules (supra), hence, I have no other option except to reject the memo of appeal by invoking Rule 3 of Order 41 C.P.C."

10. Learned Counsel for the appellants seeks time to move such an application. Rule 10 (supra) provides that application under Rule 2 Order 41 of C.P.C. ought to have been moved prior to the date fixed for hearing the appeal. No such application has been filed before this Court despite the fact that present appeal is pending since 1982 and the Supreme Court judgment in Kulwant Kaur's case (supra) came in 2001. In view of observation made in para 4 of the judgment in Kulwant Kaur's case (supra), I am not inclined to adjourn the appeal enabling the appellants to move amendment application. Appeal is pending for last 28 years. It has to reach logical end. Since the appellants have not filed any application under Rule 2 Order 41 of C.P.C, I have no other option but to reject the Memo of Appeal under Rule 3 Order 41 of C.P.C.

11. In view the above, the Memo of Appeal is rejected with no order as to costs.