

2023 LiveLaw (SC) 112

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SANJIV KHANNA; J., M.M. SUNDRESH; J.

**CIVIL APPEAL NO. OF 2023 (@ SLP (C) No. 9172 of 2020); FEBRUARY 13, 2023
ARVIND KUMAR JAISWAL (D) THR. LR. *versus* DEVENDRA PRASAD JAISWAL VARUN**

Code of Civil Procedure, 1908; Order XLI Rule 23, 23A, 24 and 25 - Remand - An order of remand prolongs and delays the litigation and hence, should not be passed unless the appellate court finds that a re-trial is required, or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial of the dispute or there is no complete or effectual adjudication of the proceedings, and the party complaining has suffered material prejudice on that account. Where evidence has already been adduced and a decision can be rendered on appreciation of such evidence, an order of remand should not be passed remitting the matter to the lower court, even if the lower court has omitted to frame issue(s) and/or has failed to determine any question of fact, which, in the opinion of the appellate court, is essential. The first appellate court, if required, can also direct the trial court to record evidence and finding on a particular aspect/issue in terms of Rule 25 to Order XLI, which then can be taken on record for deciding the case by the appellate court.

Code of Civil Procedure, 1908; Section 33, Order XX Rule 4(2), 5; Order XLI Rule 23, 23A, 24 and 25 - Remand - High Court passed order of remand observing that the judgment of the trial court was not written as per the mandate of Section 33 and Rule 4(2) and 5 of Order XX of the Code, as the discussion and reasoning on certain aspects was not detailed and elaborate - Allowing appeal, the Supreme Court observed: This is not a case where the evidence is not adduced and on record. In fact, the first portion of the judgment of the High Court elaborately records the contention of the parties and the facts and evidence relied by the parties - First appeal restored before High Court.

(Arising out of impugned final judgment and order dated 19-12-2019 in FA No. 104/2013 passed by the High Court of Judicature at Patna)

For Petitioner(s) M/S. Ranjan And Company, AOR Mr. Nadeem Hussain, Adv. Ms. Kumari Bandana, Adv.

For Respondent(s) Mr. S. R. Singh, Sr. Adv. Mr. Anurag Singh, Adv. Mr. Anil Kumar Mishra, AOR Mr. Gaurav Lomes, Adv. Mr. Ajay Yadav, Adv.

ORDER

Leave granted.

In our opinion, the impugned judgment of the High Court remanding the case to the trial court by relying upon Section 33 and Order XX of the Code of Civil Procedure, 1908 (the 'Code'), overlooks the provisions of Rule 23, 23A, 24 and 25 of Order XLI of the Code.

An order of remand prolongs and delays the litigation and hence, should not be passed unless the appellate court finds that a re-trial is required, or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial of the dispute or there is no complete or effectual adjudication of the proceedings, and the

party complaining has suffered material prejudice on that account.¹ Where evidence has already been adduced and a decision can be rendered on appreciation of such evidence, an order of remand should not be passed remitting the matter to the lower court, even if the lower court has omitted to frame issue(s) and/or has failed to determine any question of fact, which, in the opinion of the appellate court, is essential. The first appellate court, if required, can also direct the trial court to record evidence and finding on a particular aspect/issue in terms of Rule 25 to Order XLI, which then can be taken on record for deciding the case by the appellate court.

In the present case, the High Court, as the first appellate court, which is also a court of fact and law, has passed an order of remand observing that the judgment of the trial court was, in its opinion, not written as per the mandate of Section 33 and Rule 4(2) and 5 of Order XX of the Code, as the discussion and reasoning on certain aspects was not detailed and elaborate.

This is not a case where the evidence is not adduced and on record. In fact, the first portion of the judgment of the High Court elaborately records the contention of the parties and the facts and evidence relied by the parties.

In view of the aforesaid, we allow the present appeal, and set aside the impugned judgment and restore the first appeal to its original number before the High Court, to be decided on merits and in accordance with law, as per the provision of order XLI of the Code. As the appeal has been pending for a considerable time, the High court would decide the appeal expeditiously as possible.

We clarify that we have not expressed any opinion on merits of the case. There would be no order as to costs.

Pending application(s), if any, shall stand disposed of.

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¹ See *Shivakumar and Others v. Sharanabasappa and Others*, (2021) 11 SCC 277; and *Bachahan Devi and Another v. Nagar Nigam, Gorakhpur and Another*, (2008) 12 SCC 372.