



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

(114)

CR-4123-2026 (O&M)

Date of Decision: **15.05.2026**

PUNEET KUMAR AND OTHERS

... Petitioners

Versus

SURESH KUMAR AND OTHERS

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Rajat Verma, Advocate with
Mr. Ishwar Chand Kadwal, Advocate
for the petitioners.

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VIRINDER AGGARWAL, J. (Oral)

1. The petitioner invokes the extraordinary supervisory jurisdiction of this Court under Article 227 of the Constitution of India to impugn the legality and propriety of the order dated 23.04.2026 (**Annexure P-5**), rendered by the learned Additional District Judge, Karnal. By way of the impugned order, the learned Appellate Court below erroneously dismissed the petitioner's application dated 20.02.2020 (**Annexure P-3**) preferred under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ('CPC' for short), seeking the summary rejection of the memorandum of appeal. This revision is instituted to rectify a patent jurisdictional error and to ensure that an incompetent appeal is not permitted to remain on the file of the Court.

2. The factual backdrop culminating in the present proceedings is that the petitioners/plaintiffs had initially instituted a civil suit seeking the



relief of permanent injunction, which was decided vide decree and judgment dated 26.02.2013. Aggrieved there against, the petitioners preferred a first appeal, which was allowed vide decree and judgment dated 08.01.2015. Thereafter, in Regular Second Appeal (for short 'RSA'), this Court vide order dated 11.02.2019 remanded the matter to the learned Civil Court for fresh adjudication in the light of the provisions of the Haryana Management of Civil Amenities and Infrastructure Deficient Municipal Area (Special Provision) Act, 2016, while keeping intact the decree and judgment dated 08.01.2015 passed by the learned First Appellate Court. The aforesaid remand order attained finality, no proceedings having been initiated to challenge the same.

2.1. Pursuant to the remand, the learned Trial Court, after affording due opportunity of hearing to the parties and considering the matter in detail, decided the suit afresh vide decree and judgment dated 06.11.2019. Against the said decree and judgment, the respondents preferred a first appeal before the learned Additional District Judge. The petitioner, in turn, moved an application seeking rejection of the memorandum of appeal on the ground that the appeal itself was not maintainable and that the decree and judgment dated 06.11.2019 were not appealable in view of the embargo contained under Section 105(2) of CPC. However, after hearing learned counsel for the parties, the learned Additional District Judge dismissed the said application vide the impugned order dated 23.04.2026.

2.2. Aggrieved by the aforesaid order, the petitioner has approached this Court by way of the present revision petition.



3. Learned counsel for the petitioner has contended that the learned First Appellate Court failed to appreciate that the decree and judgment impugned before it had been rendered by the learned Trial Court pursuant to, and in strict compliance with, the remand order passed by this Court. It is submitted that, in view of the statutory embargo contained in Section 105(2) of CPC, the said decree and judgment were not amenable to challenge by way of a regular first appeal under Section 96 CPC. It has further been argued that once the matter stood remanded by this Court with specific directions, the jurisdiction of the learned Trial Court became confined to the limited scope of the remand order, and the Trial Court, while adjudicating the matter afresh, effectively acted as a delegate of this Court. Consequently, according to the petitioner, the learned First Appellate Court lacked the jurisdictional competence to entertain the appeal arising therefrom. In support of the aforesaid submissions, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Krishna Pillai Rajasekharan Nair (Dead) through LRs v. Padmanabha Pillai (Dead) through LRs and Others, Civil Appeal No.13133 of 1996, decided on 15.12.2003.***

4. I have duly considered the submissions advanced by learned counsel for the petitioners and have carefully perused the judgment relied upon, the provisions of Section 105(2) CPC, as well as the entire paper-book placed on record.

5. The Hon'ble Apex Court has unequivocally settled the position that while a party aggrieved by an order of remand from which an appeal lies is precluded from challenging its correctness if no appeal is



preferred at the first instance, this rule is subject to the exception of jurisdictional error. It has been held that once a matter reaches a superior forum to the one which directed the remand, the legality and validity of the remand order may be agitated. Furthermore, no such limitation fetters the plenary powers of the Hon'ble Supreme Court under Article 136 of the Constitution of India. The core of this settled jurisprudence is that the correctness of a remand order cannot be questioned in a forum subordinate or inferior to the authority that directed the remand.

5.1. In the present case, this Court, while deciding the RSA via judgment dated 11.02.2019, deemed it appropriate to remand the suit to the Trial Court for a *de novo* adjudication in light of the subsequent legislative enactments and Notifications. By necessary implication, this Court set aside the decrees and judgments of both the courts below, reviving the suit for a fresh determination.

5.2. Consequently, when the learned Trial Court subsequently adjudicated the suit and passed the decree and judgment dated 06.11.2019, a statutory right of appeal under Section 96 of CPC accrued to the aggrieved party. A First Appeal against such a decree is legally maintainable. The learned First Appellate Court, therefore, acted within its jurisdiction and in accordance with law in dismissing the petitioner's application for the rejection of the memorandum of appeal.

5.3. Finding no patent illegality, material infirmity, or jurisdictional error in the findings recorded by the learned First Appellate Court, this Court concludes that the impugned order warrants no interference. The revision petition, being manifestly devoid of merit, is hereby **dismissed**.



6. It is, however, clarified that the observations recorded here-in-above are confined exclusively to the adjudication of the controversy arising in the present proceedings and shall not be construed as an expression of opinion on the merits of the underlying dispute between the parties. Any observations made in this order are purely prima facie in nature and limited to the determination of the issues germane to the present petition. Nothing contained herein shall prejudice, influence, or adversely affect the rights, claims, defences, or contentions of either party in any pending or future proceedings, nor shall the same be treated as a conclusive determination of any substantive question of fact or law involved in the main matter.

7. In view of the fact that the principal controversy stands finally adjudicated, all pending miscellaneous applications, if any, shall also stand disposed of accordingly. No further directions or orders are required to be passed in that regard.

15.05.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No