

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 366-367 of 2009

NATHU LAL

Appellant(s)

VERSUS

NATHI BAI

Respondent(s)

O R D E R

At the threshold, learned counsel for the appellant submits that the matters require to be remanded back to the High Court and therefore he does not think it appropriate to touch upon the merits of the case. His submission is that pursuant to the leave granted by this Court on 08th October, 2002 in C.A. No. 3422 of 1997, it had inter alia been ordered thus :

"Mr. Bachawat, learned Senior counsel appearing for the respondent states that, even subsequent to the evidence being led before the family court, certain events have transpired and those events should be considered while hearing the appeal afresh. We express no opinion as to this. The respondent is at liberty to apply to the High Court which is free to decide such application, if made, in accordance with law.

In the result, this appeal is allowed, the impugned judgment of the High Court is set aside and the DB CM Appeal No. 244 of 1993 before the High Court is restored to file to be heard and disposed of in accordance with law. Pending hearing and disposal of the appeal, the interim order already passed by this Court as to maintenance shall continue."

Learned counsel contends that immediately thereafter an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') was filed in the High Court in D.B. Civil Misc. Appeal No. 244 of 1993 prior to the passing of the impugned order.

We have also perused the Order dated 24.04.2006 which record the filing of the application for taking the Additional Documents on record, and that counsel for the Respondent had prayed for an opportunity to file a reply. The contention is that without disposing of this Application under Order XLI Rule 27 the impugned Judgment has been passed.

It is also argued that the documents which the appellant wanted the High Court to take into consideration, i.e. subsequent Judgment/Order passed in judicial proceedings between the parties, had not been

taken into consideration. Counsel submits that it is for these reasons that the further hearing on merits of this Appeal need not been gone into.

Keeping all the circumstances in view, since avowedly the High Court has not decided the appellant's application under Order XLI Rule 27 CPC, the course which commends itself to us is to remand the matter in its entirety to the High Court with a direction to first decide the Appellant's application under Order XLI Rule 27 CPC. The Impugned Order is accordingly set aside. The matters are remanded back to the High Court for consideration afresh

Appeals stand disposed of. No order as to costs.

.....J  
(VIKRAMAJIT SEN)

.....J  
(PRAFULLA C. PANT)

NEW DELHI  
DECEMBER 17, 2014

ITEM NO.103

COURT NO.12

SECTION XV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 366-367/2009

NATHU LAL

Appellant(s)

VERSUS

NATHI BAI

Respondent(s)

(with appln. (s) for permission to submit additional document(s) and c/delay in filing reply and permission to file additional documents and exemption from filing O.T. and office report)

Date : 17/12/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAMAJIT SEN  
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. S.D. Singh, Adv.  
Mr. Vijay Kumar, Adv.  
Ms. Bharti Tyagi, Adv.

For Respondent(s) Mr. D. N. Goburdhan, Adv.  
Mr. Prabal Bagchi, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Appeals stand disposed of in terms of the Signed  
Order.

(NEELAM GULATI)  
COURT MASTER

(SAROJ SAINI)  
COURT MASTER

(Signed order is placed on the file)