

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5831-5832 OF 2023  
(Arising from SLP(C) Nos. 8372-8373/2022)

SURINDER MOHAN

APPELLANT(S)

VERSUS

BHARAT KUMAR

RESPONDENT(S)

O R D E R

Leave granted.

2. These appeal(s) assail the correctness of judgment and Order of the Punjab and Haryana High Court dated 21.12.2021 whereby both the Second Appeals from Order Nos.106 and 107 of 2018 were dismissed and the order of remand passed by the First Appellate Court to the Trial Court to decide the suit afresh excluding the additional evidence of the plaintiff led along with the expert evidence, permitted by the High Court.

3. In brief, relevant facts are that the evidence of the plaintiff was closed. The plaintiff had sought permission to lead expert evidence in order to prove secondary evidence of an agreement to sell.

4. The Trial Court declined the request whereupon the matter went to the High Court by way of Civil Revision No.1987 of 2006. The same was allowed by order dated 06.04.2006 and the plaintiff was granted one

opportunity to examine the expert witness at his own responsibility, subject to payment of costs of Rs.2,000/- .

5. Pursuant thereto the Trial Court proceeded to take the evidence as per the direction of the High Court.

6. On 11.05.2006, an order was passed by which it was recorded that costs of Rs.2,000/- was paid and the expert witness Harbax Mandar filed an affidavit in evidence along with a further affidavit of the plaintiff, Surinder Mohan Garg. Both the affidavits were supplied to the counsel for the defendants and the proceedings were adjourned for 21.07.2006 for cross-examination of both the witnesses.

7. The defendant did not take any objection to the affidavit filed by the plaintiff along with the affidavit of the expert witness and proceeded to cross-examine both the witnesses. The defendant further participated in the proceedings before the Trial Court and also made submissions at the stage of final arguments. It allowed the Trial Court to decide the suit. The Trial Court proceeded to partly decree the suit.

8. Both the parties preferred appeal(s) before the First Appellate Court. The First Appellate Court was very disturbed with the fact that, although, the plaintiff had taken permission to lead expert evidence

only, but had led his own evidence also without there being any order to that effect. It sharply commented on the Trial Court as well as the plaintiff and his lawyer also for this conduct.

9. The First Appellate Court allowed the appeal(s) and remanded the matters to the Trial Court for a fresh decision on the material on record excluding the affidavit filed by the plaintiff and the cross-examination conducted by the defendant of the plaintiff after liberty was granted by the High Court in the Civil Revision for leading evidence of the expert witness.

10. Aggrieved by the said order of the First Appellate Court, the present appellant approached the High Court by way of two Second Appeals for Orders, which have since been dismissed. Aggrieved therefrom, the present appeal(s) were filed.

11. It is true that the High Court had granted liberty to the appellant to lead evidence of the expert witness. However, once the plaintiff had led the affidavit of the expert witness as also his own affidavit which had been accepted not only by the Trial Court but also by the defendant. The defendant having not taken any objection to the same before the Trial Court and having further proceeded to cross-examine not only the expert but also the plaintiff and continued to participate in the proceedings before the Trial Court

and allowed it to finally decide the suit. In view of the above, we are of the view that the evidence having been duly led before the Trial Court and not objected by the defendant, there is no reason to discard or exclude the evidence placed on record.

12 In that view of the matter, we set aside the orders of the High Court as also that of the Appellate Court remanding the matter to the Trial Court.

13. We further remand the matter to the First Appellate Court to decide the same on merits without excluding the affidavit of the plaintiff and cross-examination conducted by the defendant.

14. As the suit is of the year 2001, we direct the First Appellate Court to decide the appeal(s) expeditiously on its own merits.

15. It goes without saying that parties shall extend all cooperation in the hearing of the appeal(s).

16. The appeal(s) and pending applications are disposed of in the above terms.

....., J.  
(VIKRAM NATH)

....., J.  
(AHSANUDDIN AMANULLAH)

NEW DELHI;  
SEPTEMBER 12, 2023.

ITEM NO.39

COURT NO.12

SECTION IV-B

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

Petition(s) for Special Leave to Appeal (C) No(s). 8372-8373/2022

(Arising out of impugned final judgment and order dated 21-12-2021 in SAO No. 106/2018 21-12-2021 in SAO No. 107/2018 passed by the High Court Of Punjab & Haryana At Chandigarh)

SURINDER MOHAN

Petitioner(s)

VERSUS

BHARAT KUMAR

Respondent(s)

(IA No.67625/2022-EXEMPTION FROM FILING O.T. AND IA No. 68395/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ ANNEXURES)

Date : 12-09-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH  
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. Neeraj Kumar Jain, Sr. Adv.  
Mr. Siddharth Jain, Adv.  
Mr. Umang Shankar, AOR

For Respondent(s) Mr. Dinesh Kothari, Adv.  
Mr. Gopal Singh Chauhan, Adv.  
Mr. Deepak Goel, AOR  
Mr. Kumar Kartikay, Adv.  
Mr. Sidharth Joshi, Adv.

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

Leave granted.

The appeal(s) and pending applications are  
disposed of in terms of the signed order.

(NEETU KHAJURIA)  
ASTT. REGISTRAR-cum-PS

(RANJANA SHAILEY)  
COURT MASTER

(Signed order is placed on the file.)

