REMAND IN CIVIL CASES

By

QAISER JAVED MIAN

Director Research/Faculty member Punjab Judicial Academy.

According to Black’s Law Dictionary (7th ed., p. 1295) it means,

1) The act or an instance of sending something (such as a case, claim, or person) back for future action.

2) An order remanding a case, claim or person.

The basic law which deals with the concept of Remand of Civil Cases is Section-107 and Order-XLI of the Civil Procedure Code. Under this section, an appellate court, not satisfied with the evidence lead in the lower court, is to dispense complete justice. It may itself frame additional issues and take additional evidence and/or direct the lower court to frame additional issues on the specified points of fact and/or law and require the lower court to take additional evidence and then decide the questions afresh. This process is distinct from a retrial or a trial de novo as it has a limited scope and extent. It is applicable if

(i) a trial court had omitted to frame an issue

(ii) omitted to try an issue or

(iii) omitted to determine any question of fact which, in the view of the appellate court was essential for dispensation of justice.

Remanding of a case though is discretion of the appellate court, but this discretion has very strict parameters. As a general rule, if appellate court can do complete justice on the basis of the record

---

1 This lecture was delivered in the training course of Second Batch of Additional District & Sessions Judges on Dec 07, 2009 at Punjab Judicial Academy, Lahore.

2 See PLD 1962 Pesh.28.
before it, the appellate court must not remand the case as it will entail more time and money of the litigants.³ A remand order may be proper in the cases of irregular, illegal or defective proceedings before the lower court and where the points of essence or vital have been ignored or not touched upon. A remand order should be sparingly passed. Appellate Court should decide matters finally instead of remanding the cases, unless there is a chance of miscarriage of justice. In the event that oral and documentary evidence is already on record and the parties had satisfactorily availed the opportunity of leading evidence, the case must be decided by the appellate court and should not be remanded.⁴ Where evidence on record though was sufficient for appellate court to decide the matter itself, remand could not be ordered and discretionary power was to be used only in exceptional situation.⁵

Only those cases could be remanded which could not be decided on the basis of available material on record. If controversy could be resolved on the basis of available evidence, then the question of remand would not arise.⁶

If a case is remanded allowing a new plea the whole case is not opened. The lower court or trial court will only determine the new plea and in determination of new plea(s) the affected previous findings will be ignored.⁷

Where an amendment in pleadings is of essence for settling the controversy and the amendment sought for is denied by the trial court, it is not a “proper trial” likewise non-framing of an essential issue, makes it mandatory on the appellate court to frame the issue itself and/or remand the case. No case can be remanded enabling a

³ See PLD 1965 S.C.434; 1993 SCMR 216.
⁴ See 1980 CLC 110; See also 1978 SCMR 14.
⁵ See Muhammad Darvesh etc. v. Muhammad Sharif, 1997 SCMR 524;
⁶ See Nasir Ahmad v. Khuda Bukh, 1976 SCMR 388; See also 1975SCMR 221;
⁷ See PLD 1965 S.C 690.
party to produce additional evidence unless proper opportunity was not afforded or denied to such party to lead evidence.  

Rule-23 of Order-XLI (41) CPC envisages remand of a case which is “decreed” i.e. disposal of the entire suit including dismissal on “preliminary point” whether of fact or law.

Rule-25 of Order-XLI CPC deals with the cases where the trial court has disposed of the case not on a preliminary point but having omitted to try any material issue i.e. an issue without which suit could not have been decided on merits. The basic difference in application of Rule-23 and Rule-25 of Order-XLI CPC is as follows:

i) Upon remand under Rule-23, the whole case goes back for trial, the appeal gets disposed off, case/suit is readmitted under its original number in the register of civil suits, but upon remand under Rule-25, the matter is sent back to the lower court, only for purpose of recording evidence or giving a finding on an issue and the appeal remains pending before the appellate court.

ii) Upon remand under Rule-23, the order of the appellate court is final, but upon remand under Rule-25, the order of the appellate court is interlocutory and the appeal is finally disposed of in terms of Rule-26.

iii) A remand is ordered under Rule-23 where the decision is on a preliminary point whilst it is made under Rule-25 when the entire case has been decided.

It is illegal on the part of appellate court to remand a case on such terms or directions as to provide opportunity to the opposite party to fill gaps in evidence. The appellate court is competent to

---

8 See 1985 CLC 2028; See also 1982 SCMR 1173.
9 See PLD 1992 Kar 160; See also PLD 1973 S.C 206.
10 See 1987 CLC 872, PLD 1969 S.C 60.
resettle the issues and dispose of the case on the basis of evidence on record.\textsuperscript{11}

Remand of case to court or tribunal for disposal on merits, reopens the entire case before such statutory functionary.\textsuperscript{12} Remand of case in writ petition for disposal according to law means reopening of entire case.\textsuperscript{13}

Remand if not possible under Rule-23 and Rule-25 of Order-XLI CPC, court can remand case in exercise of inherent powers to meet ends of justice and abuse of process of court.\textsuperscript{14}

Once both parties lead evidence, question of onus loses importance. A case cannot be remanded on the simple ground that the onus of proving certain fact was on the other party.\textsuperscript{15} Left out issues taken up by the appellate court, if no prejudice is to be caused to either party, it is not necessary to remand the case.\textsuperscript{16}

Under Order-XLI, one set of rules relates to remand of a case as a whole, the other contemplates remand on the ground of failure to try and frame any issue. On comparison of the two provisions, it appears that in a case where a decree is reversed in appeal, the appellate court may remand the case itself and the trial court would have full powers of considering the entire case afresh. Under Rule-25, the appellate court has power of framing an issue and referring the same for trial and the trial court would after recording evidence on such issue, return the case to appellate court.

If no finding is given by court in remand order on any of the issues, such issue would not attain finality and could be reagitated before reversional court.\textsuperscript{17} Lower appellate court not recording any

\textsuperscript{11} See 1985 CLC 2960.
\textsuperscript{12} See 1981 CLC 1561.
\textsuperscript{13} See 1981 CLC 1354 and other case at p.1503.
\textsuperscript{14} See 1984 Law Notes p.701.
\textsuperscript{15} See PLD 1990 Lah. 37.
\textsuperscript{16} 1992 MLD 2515.
\textsuperscript{17} 1986 CLC 1894.
finding on the issue decided in favour of defendant, the order of remand is illegal.\(^\text{18}\)

\(^{18}\) 1989 MLD 1358, 1989 MLD 512.