

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1347 OF 1999

MUSSABIR SHAH (D) THROUGH LRS.

APPELLANT

VERSUS

RAFIK KHAN & ORS.

RESPONDENTS

O R D E R

This appeal is filed by the defendant No.3 in the original suit questioning the validity and correctness of the judgment and decree passed in second appeal by the High Court. During the pendency of the appeal, the appellant died and his legal heirs were brought on record. Learned counsel for the appellant contended that the impugned judgment suffers from number of infirmities both in law as well as on facts. He emphasized that the second appeal was disposed of allowing it without formulating any substantial question or questions of law, if any arose for consideration between the parties, as required under Section 100 of the Civil Procedure Code ('CPC', for short). He made few more submissions
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touching the merits of the contentions raised by him in the appeal. On the other hand, the learned counsel for the respondents submitted that the impugned judgment is sustainable and the High Court, having considered the material placed on record, was right in allowing the second appeal. Confronted with the legal infirmity that the second appeal was disposed of without formulating any substantial question of law, the learned counsel for the respondents was not in a position to say anything more on this aspect.

Without examining the respective contentions on merits, we think it just and appropriate to set aside the impugned judgment on a short ground that the impugned judgment suffers from a legal infirmity, i.e., the second appeal was disposed of without formulating any substantial question or questions of law. The High Court ought to have disposed of the second appeal after formulating any substantial question or questions of law if arise for consideration between the parties as required under Section 100 of CPC.

In this view, we allow this appeal, set aside the impugned judgment and remit the second appeal to the High Court

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for formulation of substantial question or questions of law, if arise between the parties, as required under Section 100 of CPC and dispose of the second appeal. All the contentions of the parties are left open to be urged before the High Court.

No costs.

Having regard to the age of the case, we expect the High Court to dispose of the second appeal as expeditiously as possible.

[SHIVARAJ V. PATIL]

.....J.

New Delhi, [D.M. DHARMADHIKARI]
March 16, 2004.
ITEM No.102

.....J.

Court No. 9

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.1347/1999

MUSSABIR SHAH (D) THROUGH LRS.

APPELLANT (S)

VERSUS

RAFIK KHAN & ORS.
(With office report)

RESPONDENT(S)

Date : 16/03/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. S.S. Khanduja, Adv.
for Mr. Y.P. Dhingra, Adv.

For Respondent (s)Mr. Neeraj Kumar Jain, Adv.
Nos.1-4for Mr. U.S. Prasad, Adv.

No.5Mr. A.P. Medh, Adv.

No.6Ex-parte

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

Heard learned counsel for the parties for 10 minutes.
The appeal is allowed with no costs in terms of the signed order.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)