

A BALLA RAM (DEAD) BY LRS. AND ORS.

v.

PHOOLA (DEAD) BY LRS. AND ORS.

NOVEMBER 27, 2002

B [SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

*Code of Civil Procedure, 1908:*

C S.100(3)—*Second appeal—Dismissed by High Court without considering whether any substantial question of law arose for consideration between the parties—Held, it is expected of the appellant to frame substantial question of law in the memorandum of appeal—In order to consider and dispose of a second appeal, substantial question or questions of law should arise for consideration between the parties—Order of High Court does not indicate whether any substantial question of law arose for consideration between the parties—Matter remitted to High Court to consider whether any substantial question or questions of law arise for consideration and then dispose of the second appeal in accordance with law.*

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E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1356 of 1993.

From the Judgment and Order dated 13.5.1992 of the Punjab and Haryana High Court in R.S.A. No. 2112 of 1991.

F M.N. Krishnamani, P.K. Jain, P.K. Goswami and S. Pani for the Appellants.

Yashank Adhyaru, Kavin Gulati, Mrs. Nandini Gore, Ms. Aditi Choudhary and Mrs Manik Karanjawala for the Respondents.

G The following Order of the Court was delivered

Heard the learned counsel for the parties. The correctness and validity of the order passed in a second appeal by the High Court of Punjab and Haryana at Chandigarh is questioned in this appeal.

H Disposing of the second appeal, the High Court passed the following

order:

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“Heard. No merit.

Dismissed.”

The High Court did not consider whether any substantial question or questions of law arose for consideration between the parties as required under Section 100 of the Code of Civil Procedure. This Court has taken the consistent view that in order to consider and dispose of a second appeal, substantial question or questions of law should arise for consideration between the parties. The impugned order does not indicate whether any substantial question or questions of law arose for consideration between the parties. It is expected of the appellant to frame substantial question of law in the memorandum of appeal. Sub-Section (3) of Section 100 C.P.C. states that:

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“In an appeal under this Section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.”

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In this view, without stating anything more on merits, the impugned order is set aside.

The appeal is allowed accordingly. The matter is remitted to the High Court to consider whether any substantial question or questions of law arise for consideration and then dispose of the second appeal in accordance with law.

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Having regard to the fact that the suit is of the year 1982, we request the High Court to dispose of the second appeal within a period of six months from the date of the receipt of the copy of this order.

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R.P.

Appeal allowed.