

A RANJIT KUMAR KARMAKAR @ DULAL KARMAKAR

v.

HARI SHANKAR DAS

(Civil Appeal No. 3967 of 2019)

B APRIL 18, 2019

**[ABHAY MANOHAR SAPRE AND**

**DINESH MAHESHWARI, JJ.]**

*Code of Civil Procedure, 1908 – s.100 – Second appeal –*

- C *Appellant-plaintiff filed suit for declaration of his right, title and interest in the suit land, for confirmation of his possession over the suit land and lastly for permanent injunction – Suit dismissed by the Trial Court – Aggrieved, plaintiff filed first appeal, which was allowed – In second appeal, High Court set aside the judgment of first appellate Court and restored the judgment of the Trial Court –*
- D *On appeal, held: High Court though admitted the defendant's second appeal by framing six substantial questions of law for its hearing but none of the substantial questions were answered – Instead, High Court discussed all other issues, which were not the subject matter of the six questions framed – s.100(5) CPC provides*
- E *that the second appeal shall be heard only on the substantial question(s) of law framed by the High Court u/s.100(4) of the Code – Thus, case remanded to the High Court for deciding second appeal afresh.*

**Allowing the appeal, the Court**

- F **HELD:** 1. **The High Court though admitted the second appeal by framing six substantial questions of law but did not answer any of them on merits and instead went into discussion on all other issues, which were not the subject matter of the six questions framed and allowed the second appeal as if it was deciding the first appeal. [Para 11][152-H; 153-A]**
- G **2. Section 100 (5) of the Code of Civil Procedure, 1908, in express terms, provides that the second appeal shall be heard only on the substantial question(s) of law framed by the High Court under Section 100 (4) of the Code. Therefore, the High**

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**Court has to confine its inquiry to the question(s) framed and not beyond it. [Para 12][153-A-B]** A

**3. The proviso to sub-section (5) of Section 100 of the Code also enables the respondent to raise a plea at the time of hearing that the questions framed either do not arise in the case or the questions framed are not the substantial questions of law. At the same time, the High Court has the jurisdiction to frame any additional question(s) of law but this the High Court can do by assigning the reasons. [Para 13][153-C]** B

**4. Since the High Court failed to answer the six questions either way on their respective merits and yet proceeded to allow the second appeal, such order, is not legally sustainable and has to be set aside. The case is remanded to the High Court for deciding the second appeal, out of which this appeal arises, afresh on its merits. [Paras 14, 15][153-D-E]** C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3967 D  
of 2019.

From the Judgment and Order dated 24.09.2014 of the High Court of Tripura at Agartala in R.S.A. No. 42 of 2007.

Ms. Malini Poduval, Ms. Babita Sant, Reepak Kansal, Pravir Choudhary, Advs. for the Appellant. E

Rituraj Biswas, Ms. Sujaya Bardhan, Chandra Prakash, Advs. for the Respondent.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** F

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 24.09.2014 passed by the High Court of Tripura at Agartala in R.S.A. No.42 of 2007 whereby the High Court allowed the second appeal filed by the respondent herein, set aside the judgment/decrees dated 24.04.2007 passed by the Additional District Judge, West Tripura, Agartala in T.A. No.34 of 2006 and restored the judgment/decrees dated 05.04.2006 passed by the Civil Judge(Junior Division) No.2, Agartala, West Tripura in T.S. No.103 of 2004. G

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- A        3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.
4. The appellant is the plaintiff and the respondent is the defendant of the civil suit out of which this appeal arises.
- B        5. The appellant filed a civil suit (T.S.No.103 of 2004) against the respondent in the Court of Civil Judge (Junior Division). The suit was for declaration of his right, title and interest in the suit land, for confirmation of his possession over the suit land and lastly for permanent injunction. The respondent contested the suit.
- C        6. The Trial Court, by judgment decree dated 05.04.2006 dismissed the suit. The plaintiff (appellant herein) felt aggrieved and filed first appeal (T.A. No.34/2006) before the Additional District Judge, West Tripura, Agartala. By judgment dated 24.04.2007, the First Appellate Court allowed the appeal and decreed the suit.
- D        7. The defendant (respondent herein) felt aggrieved and filed second appeal in the High Court of Tripura. By impugned order, the High Court allowed the appeal and set aside the judgment of the first Appellate Court and restored the judgment decree of the Trial Court which has given rise to filing of this appeal by way of special leave to appeal by the plaintiff in this Court.
- E        8. Heard Ms. Malini Poduval, learned counsel for the appellant and Mr. Rituraj Biswas, learned counsel for the respondent.
- F        9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside the impugned order, remand the case to the High Court for rehearing of the second appeal afresh on merits in accordance with law.
- G        10. The need to remand the case to the High Court has arisen because on perusal of the impugned order, we notice that the High Court though admitted the defendant's second appeal by framing as many as six substantial questions of law for its hearing but practically none of the substantial questions of law were answered either way by the High Court while allowing the second appeal by the impugned order.
- H        11. In other words, though the High Court admitted the second appeal on six questions but did not answer any of them on merits and instead went into discussion on all other issues, which were not the subject

matter of the six questions framed and allowed the second appeal as if it A was deciding the first appeal.

12. Section 100 (5) of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”), in express terms, provides that the second appeal shall be heard only on the substantial question(s) of law framed by the High Court under Section 100 (4) of the Code. B Therefore, the High Court has to confine its inquiry to the question(s) framed and not beyond it.

13. The proviso to sub-section (5) of Section 100 of the Code also enables the respondent to raise a plea at the time of hearing that the questions framed either do not arise in the case or the questions framed are not the substantial questions of law. At the same time, the High Court has the jurisdiction to frame any additional question(s) of law but this the High Court can do by assigning the reasons. C

14. Since the High Court failed to answer the six questions (set out in Para 2 of impugned order) either way on their respective merits and yet proceeded to allow the second appeal, such order, in our view, is D not legally sustainable and has to be set aside.

15. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the second appeal, out of which this appeal arises, afresh on its merits in accordance with law uninfluenced by any observations made in the impugned order and in this order because having formed an opinion to remand the case, we have not expressed E any opinion on the merits of the controversy.