

Supreme Court of India

Arun Chandra Das Mazumdar vs Abdul Noor Barbhuiya (Dead) By ... on 26 February, 2008

Bench: H.K. Sema, Markandey Katju

CASE NO. :

Appeal (civil) 2901 of 2002

PETITIONER:

ARUN CHANDRA DAS MAZUMDAR

RESPONDENT:

ABDUL NOOR BARBHUIYA (DEAD) BY LRS. & ORS

DATE OF JUDGMENT: 26/02/2008

BENCH:

H.K. SEMA & MARKANDEY KATJU

JUDGMENT:

**JUDGMENT O R D E R CIVIL APPEAL NO.2901 OF 2002** This appeal is preferred by the defendant. Despite receipt of notice plaintiff- respondent did not appear.

The sole contention in this appeal is that the High Court in Second Appeal interfered with the finding of fact recorded by the First Appellate Court without framing a proper substantial question of law.

In paragraph 6 of the High Court order although it purported to have referred to some substantial questions of law, what are those substantial questions of law which have been framed are not disclosed. Instead, the High Court proceeded with the disposal of the appeal without any framing substantial question of law. Only for this reason the order of the High Court is set aside. The matter is remitted to the High Court to hear the Second Appeal afresh after framing substantial question of law as contemplated under Section 100 C.P.C. If there is no substantial question of law involved the High Court may pass appropriate orders as it may deem fit and proper. Second Appeal is restored to the file of the High Court to dispose of in accordance with law.

The appeal is allowed accordingly. No costs.