

(2008) 02 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeal No. 2901 of 2002

Arun Chandra Das Mazumdar

APPELLANT

Vs

Abdul Noor Barbhuiya (Dead) by LR. and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2008) 02 SC CK 0033

Hon'ble Judges : Markandey Katju, J;H. K. Sema, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. 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.

2. 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 u/s 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.