

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6203 OF 2009

(Arising out of S.L.P. (C) No.7461 of 2009)

Pushpchand

...Appellant(s)

Versus

Builam Kanwar (Dead) through L.Rs.

...Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

This is the tenant's appeal for setting aside judgment dated 17th January, 2009 of the learned Single Judge of the Rajasthan High Court who allowed the second appeal filed by the landlord, set aside judgment and decree dated 2.2.2005 of the lower appellate court and restored the decree of eviction passed by the trial Court.

A perusal of the impugned judgment shows that after making a mention of the judgments and decrees passed by the courts below, the High Court proceeded to observe: "The following substantial questions of law arises for consideration by this Court:

"Whether the first appellate court could reverse the findings of facts recorded by the learned trial Court on issue No.1(a) and 1(b) simply because the learned first appellate court did not agree with the findings recorded by the learned trial Court and no error much less any jurisdictional error has been committed by the learned trial court."

....2/-

It is borne out from the record that at the time of issuance of notice in the second appeal, the High Court did not frame any substantial question of law. Even before commencement of hearing of the second appeal, the High Court is not shown to have formulated any substantial question of law.

It is settled law that when a second appeal is placed before the High Court for consideration, it has to consider whether any substantial question of law arises therein. In case the High Court feels satisfied that the case involves a substantial question of law, then it is required to formulate such question. The appeal is then required to be heard on the question so formulated. The respondent can, at the hearing of the appeal, argue that the case does not involve any substantial question of law including the one framed by the High Court. Of course, it is open to the High Court, for reasons to be recorded, to formulate any other substantial question of law.

Since the impugned judgment was passed by the High Court without formulating any substantial question of law arising in the case, the same is liable to be set aside. Accordingly, the appeal is allowed, the impugned judgment is set aside and the matter is remitted to the High Court, which shall now consider whether any substantial question of law arises in the appeal. If the High Court comes to the conclusion that such question arises, then it shall formulate the same and, thereafter, decide the appeal after giving opportunity of hearing to the parties.

As the suit for eviction was filed in the year 1991, the High Court is requested to dispose of the appeal within a period of six months from the date of receipt / production of copy of this order.

....3/-

All the parties are represented before this Court. Therefore, the High Court is not required to issue fresh notice to any of them. It will be open to the parties to inform their respective advocates before the High Court and arrange for their appearance on the date which may be fixed by the High Court.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,
September 11, 2009.



JUDGMENT