

Appeal Against the Appellate Decree and Substantial Question of Law: Whether High Court Can Decide the Issue of fact in Second Appeal?

Dr.Vijay Kumar Himanshu*

ABSTRACT

Appeal against the appellate decree in the superior court is called the second appeal and at this appellate stage the matter involving issue of fact or additional evidence is not appreciated. At the stage of second appeal the matter involving substantial question of law as distinct from ordinary question of law. This was particularly after 1976 amendment of the code bringing radical changes in S.100 &103 and over the time the substantial question of law has acquired new perspective focussing on the impact and effect of the decision on the lis between the party. The interference on question of fact can be done by the High court under special circumstances based upon evidence on record necessitating disposal of the case which the subordinate court has failed to do. Further in matter of appreciating the fact s.103 should not be treated as exception to s.103 rather than supplemental.

I. Introduction

The right to appeal is a statutory right conferred by law and unless until there is provision no right to appeal accrues. In appeal there is re-appreciation of the case by the Superior Court. The condition and pre-requisite for the entertainment of appeal is different at every increasing hierarchy of the court. At the first appellate stage the issue of fact, fact & law can both be entertained. At the second appellate stage the interference or re-appreciation of the issue of fact is ruled out altogether except in over-bearing circumstances and as permitted by the statute. Similarly, the interference at second appeal against appellate decree on the question of law has been limited to the substantial as distinct from the pure question of law.

The law relating to second appeal is contained in S.100 to 103,107,108 and Order 42 of the Civil Procedure Code, 1908. S.100 confers right to file second appeal to the High Court on the

**Assistant Professor, Law Centre-1 Faculty of Law University of Delhi.*