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HIGH COURTS ARE REQUIRED TO FORMULATE SUBSTANTIAL QUESTIONS OF LAW IN A SECOND APPEAL

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Recently the Supreme Court in *Kunjumammed and Anr. v Mariyumma (Civil Appeal No. 2771 of 2020)*, held that while hearing a second appeal, the High Court **must** frame the substantial question of law.

Background:

It is often seen that High Courts continue to allow second appeals without following the procedure prescribed *inter alia* under Section 100 (*Second Appeals*) of the Code of Civil Procedure, 1908 (CPC). In a few cases, it has also been seen that the appeals have been admitted without framing the substantial question of law and relying solely on the questions of law inserted in the memorandum of appeal by the respective parties. Such orders have been overruled by the Supreme Court from time to time with the exception of second appeals filed with the Punjab and Haryana High Court (in view of Section 41 of the Punjab Courts Act, 1918 which specifically does not require the High Court to frame a substantial question of law at the time of deciding a second appeal).

Facts:

The present appeal arose out of an order passed by the Kerala High Court in a second appeal wherein the High Court did not frame a substantial question of law and relied solely upon the questions of law shown in the memorandum of appeal. In the said second appeal, the High Court had merely reiterated the questions of law present in the memorandum of appeal and continued to allow the second appeal.

Decision:

The Supreme Court set aside the impugned order on the ground that the High Court ought to have formulated a substantial question of law before proceeding with arguments and thereafter referred the parties back to the Kerala High Court for the appeal to be heard on merits and in accordance with procedure prescribed under the CPC.

Comment:

The Supreme Court has once again made it abundantly clear that the High Court ought to follow the provisions of the CPC and frame its own substantial question of law, thereby requiring an examination and analysis to be conducted by the court. Such questions of law should be clearly indicated by the court. Once, the substantial question(s) of law is framed, it is only then that the parties are required to make the

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necessary arguments pertaining to those questions. In fact, relying on the Supreme Court decision in *Sudam Kisan Gavane (D) thr. LRs. & Ors. v Manik Ananta Shikketod (D) by LRs. & Ors. (Civil Appeal 5272 of 2010)*, it can be said that if no substantial question of law arises, then such an appeal should be dismissed at the threshold.

The aforesaid decision may help reduce the burden of Courts by preventing parties from filing frivolous second appeals, even when no substantial question of law arises.

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