

**SUPREME COURT OF INDIA**

Mehrunnissa Bee

Vs.

Mohd. Noorulla Sheriff

C.A.No.6599 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

04.11.2008

**ORDER**

1. Delay condoned. Applications for substitution are allowed.
2. Leave granted. Having heard learned counsel for the parties, we are of the opinion that the interest of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration thereof afresh.
3. We have passed this order having regard to the fact that the High Court while disposing of the appeal noticed the contentions of the learned counsel appearing on behalf of the parties as also the findings of the Courts below and dealt as under:

“It is not only the decision arrived at by the Lower Court as aforesaid, but also the manner in which the said decision has been arrived at on trial recording the evidence following the procedures established by law, the Lower Court cannot be said to be either on the error or to be unfair. This Court is not able to see any patent error of law or perversity in approach or any legal infirmity or inconsistency in the whole of the judgment rendered by the Court below and therefore the interference of this Court that is sought to be made into the well considered and merited judgment and decree passed by the Lower Court, is neither necessary nor warranted in the circumstances of the case.” The manner in which the impugned judgment has been passed is wholly unsatisfactory. The First Appellate Court while exercising its jurisdiction under Section 96 of the Code of Civil Procedure is bound to consider the facts as also the law arising in the suit. However, in this case, as noticed hereinbefore, the High Court has refused to interfere with the judgment of the trial Judge, inter-alia, on the ground that the recording of the evidence cannot be said to be either erroneous or unfair. The High Court, therefore, while considering the matter afresh shall pass a judgment on the merit of the matter upon hearing the learned counsel for the parties.

4. With the aforementioned directions and observations, the appeal is allowed.