

SUPREME COURT OF INDIA

Muzaffar Ali

Vs.

Dasaram

C.A.No.85 of 2009 arising out of SLP)No.6241 of 2008

(Tarun Chatterjee and H. L. Dattu JJ.)

12.01.2009

ORDER

1. Leave granted.

2. In our view, the impugned order is liable to be set aside on a simple ground that while deciding the Second Appeal, the High Court of Madhya Pradesh had not considered a part of the order of the Appellate Court, by which the application filed by the appellant before the Appellate Court under Order 41 Rule 27 of the *Code of Civil Procedure* was rejected. It is true that the First Appellate Court, while deciding the First Appeal, had given reasons for rejection of the said application but the ground for such rejection was, as noted hereinabove, not considered by the High Court.

3. That being the position, we set aside the Judgment of the High Court and direct it to decide the appeal afresh on merits and in accordance with law along with the application under Order 41 Rule 27 of the CPC and the reasons given by the First Appellate Court for its rejection.

4. The High Court is now requested to decide the second appeal along with the application under Order 41 Rule 27 of the CPC on merits within a period of three months from the date of supply of a copy of this order. While deciding the same, the High Court shall also consider the reasons for rejection of the application under Order 41 Rule 27 of the CPC given by the Appellate Court.

5. The impugned order is, therefore, set aside. The appeal is allowed to the extent indicated above. There will be no order as to costs.