

SUPREME COURT OF INDIA

Nicholas V. Menezes

Vs.

Joseph M. Menezes

C.A.No.1874 of 2009

(Tarun Chatterjee and H.L.DattuJJ.)

25.03.2009

ORDER

1. Leave granted.
2. In our view, this appeal can be disposed of on a very short point.
3. A First Appeal was filed by the appellant in the High Court of Judicature at Bombay, which was dismissed by a learned Single Judge of the High Court without calling for the records and proceedings and without appreciating the pleadings and evidence, oral and documentary, on record. It is well settled that while deciding a First Appeal, the High Court must consider the evidence on record, oral and documentary and also the questions of law raised before it and at the same time it was the duty of the court to consider the reasons given by the trial court against which the first appeal was filed and thereafter dispose of the same after passing a speaking and reasoned order in accordance with law. In the present case, having gone through the Judgment of the High Court, we find that this procedure was not adopted by the High Court. That being the position, we set aside the judgment of the High Court and send the case back to it for consideration of the appeal on merits.
4. We request the High Court to dispose of the appeal after remand within three months from the date of supply of a copy of this order to it positively. It is needless to say that the High Court shall now decide the same after giving reasons and after appreciating the records and the pleadings and evidence on record in accordance with law.
5. Accordingly, the impugned order is set aside and the appeal is allowed to the extent indicated above. There will be no order as to costs.