

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज <u>State Vs. Rughnathram</u> <u>Appeal Decree/TA/1842/2005/Jodhpur</u>	नम्बर व तारीख जो अहकाम जो इस हुक्म की तामील में जारी हुए
	<p style="text-align: center;"><u>D.B.</u></p> <p style="text-align: center;">Shri Suraj Bhan Jaiman, Member Shri Rajinder Kumar, Member</p> <p>Present:- Sh. Pushpendra Singh Naruka, Dy. Govt. Advocate for the Appellant Shri N.K Goyal, counsel for the Respondents.</p> <p style="text-align: center;"><u>JUDGMENT</u> Date: 03-07-2018</p> <p><u>Per Shri Rajinder Kumar, Member</u></p> <ol style="list-style-type: none">1. This second appeal has been preferred under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree dated 16-10-2004 of Revenue Appellate Authority, Jodhpur whereby appeal no. 187/04 filed by the respondents was accepted and the judgment and decree of the trial court dismissing suit of the respondents was set aside.2. We have heard learned counsels for the parties.3. On behalf of the State Government, Sh. Naruka has argued that the impugned judgment and decree are <i>per se</i> illegal, as the same have been passed without considering the judgment of the trial court and the arguments advanced by the State Government. The learned trial court gave issue-wise findings and a well considered judgment was passed by it but the learned by first appellate court set aside the same by	

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	<p>passing a cryptic judgment. No issue-wise findings have been recorded by the first appellate court while disagreeing with the judgment and decree of the trial court. It has also been argued that this second appeal is filed by the State Government with a delay of almost three months and an application for condonation of the said delay was also filed along with the memo of appeal. The delay occurred due to procedural formalities in filing this second appeal. Therefore, a request has been made to condone the delay in preferring the second appeal and to set aside the impugned judgment and to restore that of the trial court.</p> <p>4. On behalf of the respondents, Sh. Goyal has opposed the above submissions. He has supported the judgment passed by learned first appellate court.</p> <p>5. We have given our thoughtful consideration to the above submissions and perused the record very carefully.</p> <p>6. This second appeal has been preferred after a lapse of three months of the period of limitation. The reasons assigned by the State Government is that the delay occurred due to the procedural formalities like the appointment of OIC for filing the appeal. In support of the application filed under section 5 of the Limitation Act, 1963 is duly supported by the affidavit of the then Tehsildar (OIC) concerned. There is no rebuttal of the said application and affidavit. There is</p>	

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	<p>no reason to disbelieve the averments made in the application. The interest of the justice also require that the matter should be decided on its merits rather than the technicalities. The delay is also not of a substantial period. Therefore, the application is allowed and delay is condoned.</p> <p>7. The substantial question of law involved in this appeal is whether the judgment of the first appellate court is cryptic and as the same has been passed without dealing with all the issues and evidence led by the parties, the same has resulted in miscarriage of justice?</p> <p>8. A perusal of the judgment of the trial court reveals that issue-wise findings were given by it while dismissing the suit of the plaintiffs/respondents where as the learned first appellate court while reversing the judgment and decree of the trial court did not gave issue-wise findings as per mandate of the Code of Civil Procedure, 1908. In the matter of Santosh Hazari vs. Purushottam Tiwari (Dead) by L.Rs JT 2001 (2) SC 407 Hon'ble Supreme Court opined:-</p> <p><i>"The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application</i></p>	

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	<p><i>of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth and pressed by the parties for decisions of the appellate court."</i></p> <p><i>"While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at different findings. This would satisfy the Court hearing a further appeal that the first appellate court had discharged the duty expected of it."</i></p> <p>The facts of the present case are squarely covered by the <i>ratio decidendi</i> of the above cited case. The impugned judgment of the first appellate court shows that it falls short of consideration expected from the court of first appeal, as it did not deal with all the issues and the evidence led by the parties before recording its findings of reversal of the judgment of trial court.</p> <p>9. Therefore, the substantial question of law is answered accordingly. The impugned judgment and decree being cryptic, deserve to be set aside with a direction to the learned first appellate court to decide the first appeal afresh in accordance with law.</p> <p>10. Consequently, this appeal is accepted and the judgment and decree of the first appellate court are set aside. The matter is remanded to the first</p>	

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	<p>appellate court with a direction to register the appeal to its original number and to decide the same afresh in accordance with law after giving proper opportunity of hearing to the parties concerned.</p> <p>Pronounced.</p> <p>(Rajinder Kumar) (Suraj Bhan Jaiman) Member Member</p>	

