

Civil Procedure Code , 1908 (V of 1908), Section 100, 103 - Before powers u/s 103 C.P.C. can be exercised by the High Court in a second appeal, the following conditions must be fulfilled:

- (i) Determination of an issue must be necessary for the disposal of appeal;
- (ii) The evidence on record must be sufficient to decide such issue; and
- (iii) (a) Such issue should not have been determined either by the trial court, or by the appellate court or by both; or
- (b) such issue should have been wrongly determined either by trial court, or by the appellate court, or by both by reason of a decision on substantial question of law.

If the above conditions are not fulfilled, the High Court cannot exercise its powers u/s 103 [CPC](#).

Thus, it is evident that Section 103 C.P.C. is not an exception to Section 100 C.P.C. nor is it meant to supplant it, rather it is to serve the same purpose. Even while pressing Section 103 C.P.C. in service, the High Court has to record a finding that it had to exercise such power, because it found that finding(s) of fact recorded by the court(s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below

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