

CPC O. 42 R. 2, CPC O. 41 R. 31

Civil Procedure Code, 1908 (V of 1908), Section 104, Order XLIII Rule 2, Order XLI Rule 31 – Appellate Court has to decide the appeal preferred under Section 104 CPC following the procedure prescribed under Order XLIII, Rule 2 CPC, which provides that for that purpose, procedure prescribed under Order XLI shall apply, so far as may be, to appeals from orders – Order XLI, Rule 31 CPC provides for a procedure for deciding the appeal – The law requires substantial compliance of the said provisions – The first appellate Court being the final court of facts has to formulate the points for its consideration and independently weigh the evidence on the issues which arise for adjudication and record reasons for its decision on the said points – The first appeal is a valuable right and the parties have a right to be heard both on question of law and on facts – The first appellate Court should not disturb and interfere with the valuable rights of the parties which stood crystallised by the trial Court's judgment without opening the whole case for re-hearing both on question of facts and law – More so, the appellate Court should not modify the decree of the trial Court by a cryptic order without taking note of all relevant aspects, otherwise the order of the appellate Court would fall short of considerations expected from the first appellate Court in view of the provisions of Order XLI, Rule 31 CPC and such judgment and order would be liable to be set aside.

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