

SHRI RAJENDRA LALITKUMAR AGRAWAL

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v.

SMT. RATNA ASHOK MURANJAN & ANR.

(Civil Appeal No.1331 of 2019)

JANUARY 31, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Code of Civil Procedure, 1908 – s. 100(4), (5) – Second appeal – Substantial question of law – On facts, suit for specific performance of contract on basis of an agreement – Decreed by the trial court, however, set aside by the first Appellate Court – In second appeal, dismissal by the High Court on the ground that it does not involve any substantial question of law – Justification of – Held: Interpretation of any terms and conditions of a document such as the agreement which is admitted by the parties, constitutes a substantial question of law within the meaning of s.100 – High Court should have framed substantial question of law in relation to the true intent, rights and obligations arising from the agreement – Also it could have framed questions on the issues material for grant or refusal of specific performance – High Court decided the second appeal bipartite like the first appeal without keeping in view the scope of its jurisdiction conferred by s.100 (4) and (5) – Approach of the High Court not in conformity with the requirements of s.100 – Thus, the matter remanded to High Court for deciding the second appeal after framing substantial question of law.

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Allowing the appeal, the Court
HELD: 1.1 The High Court was not right in holding that the appeal does not involve any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure, 1908. The appeal did involve the substantial question of law and the same, therefore, should have been framed at the time of admission of the second appeal as provided under Section 100 (4) for its final hearing. Indeed Section 100 (5) provides that the appeal shall be heard only on the substantial question of law framed by the High Court under Section 100 (4) of the Code. [Para 11][818-C-D]

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- A 1.2 It cannot be disputed that the interpretation of any terms and conditions of a document (such as the agreement in this case) constitutes a substantial question of law within the meaning of Section 100 of the Code. It is more so when both the parties admit the document. Since the interpretation of documents constitutes the substantial question of law, the High Court should have first framed appropriate substantial question(s) arising in the case especially on the questions in relation to the true intent, rights and obligations arising from the agreement in the context of pleadings and the reversing findings of the two courts below and then should have called upon the respondents to reply to the questions framed keeping in view its jurisdiction under Section 100(5) and its proviso. In addition, the High Court also could have framed questions on the issues, which are material for grant or refusal of specific performance keeping in view the requirements of Section 16 of the Specific Relief Act, pleadings of the parties, and the reversing findings of the two courts below on such issues with a view to find out as to which finding is more preferable. [Paras 12-14][818-E-H; 819-A]

- B 1.3 From the reading the impugned order, it is found that on one hand, the High Court went on interpreting the terms of the document after hearing the argument of both sides and on the other hand, in conclusion, held that it does not involve any substantial question of law. It virtually, therefore, decided the second appeal bipartite like the first appeal without keeping in view the scope of its jurisdiction conferred by Section 100 (4) and (5) of the Code. The approach of the High Court while deciding the second appeal was not in conformity with the requirements of Section 100. While setting aside the impugned order, the case is remanded to the High Court for deciding the second appeal on merits in accordance with law after framing appropriate substantial question of law arising in the case. [Para 15][819-B-C, E-F]

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1331 of 2019.

H From the Judgment and Order dated 06.08.2018 of the High Court of Judicature at Bombay in Second Appeal No. 44 of 2017.

Mukul Rohatgi, Sr. Adv., Makarand D. Adkar, Braj K. Mishra, A
Vijay Kumar, Ms. Bharti Tyagi, Advs. for the Appellant.

R.B. Singhal, Sr. Adv., R.K. Singh, Ms. Rashmi Singh, Advs. for
the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted. B

2. This appeal is directed against the final judgment and order dated 06.08.2018 of the High Court of Judicature at Bombay in Second Appeal No. 44 of 2017 whereby the High Court dismissed the second appeal filed by the appellant herein. C

3. In order to appreciate the short controversy involved in this appeal, few relevant facts need mention hereinbelow.

4. The appellant is the plaintiff whereas the respondents are the defendants in the civil suit out of which this appeal arises. D

5. The appellant filed a civil suit against the respondents for specific performance of the contract in relation to the suit property. The said suit was based on an agreement dated 08.08.1984. The respondents filed their written statement and denied the appellant's claim. The Trial Court by judgment/decrees dated 05.07.2004 decreed the appellant's suit and passed a decree for specific performance of the contract against the respondents. E

6. The respondents felt aggrieved and filed first appeal before the District Judge, Pune. By judgment/decrees dated 10.11.2016, the first Appellate Court allowed the respondents' (defendants') appeal and dismissed the suit. The appellant (plaintiff) felt aggrieved and filed second appeal before the High Court. F

7. By impugned order, the High Court dismissed the second appeal holding that the appeal does not involve any substantial question of law as is required to be made out under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") which has given rise to filing of the present appeal by way of special leave by the plaintiff in this Court. G

8. The short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the plaintiff's second

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- A appeal on the ground that it does not involve any substantial question(s) of law within the meaning of Section 100 of the Code.

9. Heard learned counsel for the parties.

- B 10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order remand the case to the High Court for deciding the second appeal on merits in accordance with law after framing appropriate substantial question(s) of law arising in the case.

- C 11. Having perused the record and the judgments of the Trial Court, first Appellate Court and the impugned order, we are of the considered view that the High Court was not right in holding that the appeal does not involve any substantial question of law within the meaning of Section 100 of the Code. In our view, the appeal did involve the substantial question of law and the same, therefore, should have been framed at the time of admission of the second appeal as provided under
- D Section 100 (4) of the Code for its final hearing. Indeed Section 100 (5) of the Code provides that the appeal shall be heard only on the substantial question of law framed by the High Court under Section 100 (4) of the Code.

- E 12. It cannot be disputed that the interpretation of any terms and conditions of a document (such as the agreement dated 08.08.1984 in this case) constitutes a substantial question of law within the meaning of Section 100 of the Code. It is more so when both the parties admit the document.

- F 13. As mentioned above, since the interpretation of documents constitutes the substantial question of law, the High Court should have first framed appropriate substantial question(s) arising in the case especially on the questions in relation to the true intent, rights and obligations arising from Clauses 3, 5 and 15 of the agreement dated 08.08.1984 in the context of pleadings and the reversing findings of the two Courts below and then should have called upon the respondents to
- G reply to the questions framed keeping in view its jurisdiction under Section 100(5) of the Code and its proviso.

- H 14. In addition, the High Court also could have framed questions on the issues, which are material for grant or refusal of specific performance keeping in view the requirements of Section 16 of the

Specific Relief Act, pleadings of the parties, and the reversing findings A
of the two Courts below on such issues with a view to find out as to
which finding is more preferable.

15. From the reading the impugned order, we find that, on one B
hand, the High Court went on interpreting the terms of the document
after hearing the argument of both sides (see appearance of both parties
through lawyers) and on the other hand, in conclusion, held that it does
not involve any substantial question of law. It virtually, therefore, decided
the second appeal bipartite like the first appeal without keeping in view
the scope of its jurisdiction conferred by Section 100 (4) and (5) of the
Code. In our view, the approach of the High Court while deciding the
second appeal was not in conformity with the requirements of Section
100 of the Code. C

16. Learned counsel for the respondents(defendants), however, D
vehemently argued that the findings of the High Court, which are of
affirmance, do not call for any interference which rightly resulted in
dismissal of the suit on material issues but, in our view, it is now for the
High Court to examine the issue afresh on merits after framing the
substantial question(s) of law. We, therefore, express no opinion on the
merits of the issues urged.

17. In the light of the foregoing discussion, we refrain from entering E
into the merits of the case having formed an opinion to remand the case
and while allowing the appeal and setting aside the impugned order remand
the case to the High Court with a request to admit the appeal and frame
appropriate substantial question(s) of law which arise(s) in the case in
terms of Section 100 (4) of the Code and then decide the second appeal
on merits by answering the question(s) framed as per Section 100 (5) of
the Code in accordance with law without being influenced by any of our
observations on merits. F

18. The appeal is accordingly allowed. The impugned order is set aside. G