Ashok Rangnath Magar vs Shrikant Govindrao Sangvikar And on 27 October, 2015

Equivalent citations: 2015 AIR SCW 6318, 2015 (16) SCC 763, 2015 (6) AIR BOM R 490, (2016) 1 ANDHLD 25, (2015) 4 RECCIVR 948, (2015) 2 CLR 1131 (SC), (2016) 1 CIVLJ 834, (2016) 2 MAD LW 481, (2016) 130 REVDEC 714, (2016) 1 ICC 160, (2016) 1 JLJR 32, (2016) 1 ALL WC 183, (2016) 1 CIVILCOURTC 145, (2015) 4 KER LJ 577, (2016) 1 PAT LJR 169, (2016) 1 CAL HN 165, (2015) 3 ICC 889, (2015) 12 SCALE 195, (2016) 1 WLC(SC)CVL 246, (2016) 1 JCR 134 (SC), (2016) 157 ALLINDCAS 27 (SC), (2015) 3 ALL RENTCAS 664, (2015) 4 CURCC 432, 2016 (1) KLT SN 4 (SC), (2016) 1 BOM CR 244

Bench: M.Y. Eqbal, C. Nagappan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8909 OF 2015
Arising out of SLP(C) No.1120 of 2015

ASHOK RANGNTH NAGAR ….APPELLANT(S)

VERSUS

SHRIKANT GOVINDRAO SANGVIKAR …..RESPONDENT(S)

WITH

C.A.No.8910/2015 (Arising out of SLP(C) No.1121/2015)
C.A.No.8911/2015 (Arising out of SLP(C) No.1122/2015)

O R D E R

Leave granted.

2. We have heard Mr. Vatsalya Vigya, learned counsel appearing for the appellant and Ms. Chandrakant Giri, learned Amicus Curiae for the respondents and perused the common impugned judgment dated 13.02.2014 passed by the Bombay High Court.

3. The short question that arises for consideration in these appeals is as to whether the High Court was justified in passing the impugned judgment without formulating any substantial question of law.

4. The facts of the case in a nutshell are that the plaintiff- respondents filed a civil suit for perpetual injunction against the defendant-appellant seeking a decree restraining him from alienating the suit property.

5. After a full-fledged trial, the suit was dismissed. As against the judgment and decree passed by the trial court, the plaintiff preferred an appeal before the District Judge which was also dismissed by upholding the judgment of the trial court. Aggrieved by the same, the plaintiff- respondents filed second appeals in the High Court. The High Court without formulating substantial question of law heard the appeals and reversed the judgment and decree passed by the trial court as also of the appellate court. Consequently, the suit was decreed. Hence, these appeals by special leave.

6. Without expressing any opinion on the merits of the case prima facie we are of the view that the matter need to be remitted to the High Court to decide the second appeal afresh. The High Court, in fact, failed to notice the mandate of Section 100 CPC while deciding a second appeal. Time and again this Court has held that unless the High Court is satisfied that there is a substantial question of law, jurisdiction under Section 100 of the Code cannot be exercised.

7. Although not necessary but to remind ourselves the law settled by this Court we may refer some of the decisions hereinafter.

8. In the case of Shiv Cotex vs. Tirgun Auto Plast (P) Ltd., (2011) 9 SCC 678, against the concurrent judgment and decree of the two courts, a Second Appeal was filed before the High Court, which has been allowed by the Single Judge and the suit had been remanded to the trial court for fresh decision in accordance with law. While deciding the appeal and reversing the judgment and decree of the two courts, the High Court proceeded without formulating any substantial question of law. On these facts, this Court observed that "11. The judgment of the High Court is gravely flawed and cannot be sustained for more than one reason. In the first place, the High Court, while deciding the second appeal, failed to adhere to the necessary requirement of Section 100 CPC and interfered with the concurrent judgment and decree of the courts below without formulating any substantial question of law. The formulation of substantial question of law is a must before the second appeal is heard and finally disposed of by the High Court. This Court has reiterated and restated the legal position time out of number that formulation of a substantial question of law is a condition precedent for entertaining and deciding a second appeal. Recently, in Umerkhan v. Bismillabi decided by us on 28-7-2011, it has been held that the judgment of the High Court is rendered patently illegal, if a second appeal is heard and the judgment and decree appealed against is reversed without formulating a substantial question of law."

9. In the case of Umerkhan vs. Bismillabi, (2011) 9 SCC 684, the High Court had allowed the second appeal and set aside the judgment and decree of the First Appellate Court. While allowing the appeal and reversing the judgment of the Appellate Court, no substantial question of law was formulated. On these facts, this Court observed as under:

> "11. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the

> High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question.
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> 12. This Court has been bringing to the notice of the High Courts the constraints of Section 100 of the Code and the mandate of the law contained in Section 101 that no second appeal shall lie except on the ground mentioned in Section 100, yet it appears that the fundamental legal position concerning jurisdiction of the High Court in second appeal is ignored and overlooked time and again. The present appeal is unfortunately one of such matters where the High Court interfered with the judgment and decree of the first appellate court in total disregard of the above legal position."

10. In the case of Rameshwar Dayal Mangala v. Harish Chand, (2009) 4 SCC 800, a suit for mandatory injunction was filed and the same was decreed by the trial court. Challenging the judgment and decree of the trial court, first appeal was preferred, which was eventually allowed. Questioning the judgment and decree passed by the First Appellate Court, a second appeal was filed and the same was allowed by the High Court and the judgment and decree passed by the Appellate Court was reversed without formulating any substantial question of law. On these facts, this Court held that the High Court, exercising jurisdiction under Section 100 of the Code of Civil Procedure, cannot interfere with or reverse the judgment without formulating any substantial question of law.

11. Also in the case of B.C. Shivashankara vs. B.R. Nagaraj, (2007) 15 SCC 387, learned Single Judge of the Karnataka High Court allowed second appeal and set aside the judgment and decree without first formulating substantial question of law. This Court, therefore, after referring earlier decisions of this Court, held that the judgment of the High Court cannot be sustained in law and the matter was remitted to the High Court for its disposal in accordance with law.

12. In the case of Patrick JJ. Saldanha vs. Antony M. Saldanha, (2007) 11 SCC 148, the High Court allowed the second appeal and set aside the judgment and decree passed by the courts below. While allowing the appeal and reversing the judgment, no substantial question of law was framed by the High Court. In that context, this Court reiterated as under:

> "3. In view of Section 100 of the Code of Civil Procedure, 1908 (in short "the Code") the memorandum of appeal shall precisely state substantial question or questions of law involved in the appeal as required under sub- section (3) of Section 100. Where the High Court is satisfied that in any case any substantial question of law is involved, it shall formulate that question under sub-section (4) and the second appeal has to be heard on the question so formulated as stated in sub-section (5) of Section 100."

13. In the case of Mahavir vs. Lakhmi, (2007) 9 SCC 208, it was reiterated by this Court that while reversing the judgment and decree in second appeal by the High Court, Section 100, CPC mandates to formulate substantial question of law before allowing the second appeal and reversing the judgment and decree of the lower court.

14. In the case of Hardeep Kaur vs. Malkiat Kaur, (2012) 4 SCC 344, the second appeal was allowed by the High Court and the judgment and decree passed by the appellate Court was set aside. The short question considered by this Court was whether a second appeal lies only on a substantial question of law and is it essential for the High Court to formulate a substantial question of law before interfering with the judgment and decree of the lower appellate court. This Court, after considering almost all the earlier judgments, held as under:

> "18. The law consistently stated by this Court that formulation of substantial question of law is a sine qua non for exercise of jurisdiction under Section 100 CPC admits of no ambiguity and permits no departure. In the present case, the High Court has allowed the second appeal and set aside the judgment and decree of the first appellate court without formulating any substantial question of law, which is impermissible and that renders the judgment of the High Court unsustainable.

15. In Shah Mansukhlal Chhaganial vs. Gohil Amarsing Govindbhai, (2006) 13 SCC 113, and Boodireddy Chandraiah vs. Arigela Laxmi, (2007) 8 SCC 155, this Court reiterated the same view that the second appeal cannot be allowed by the High Court without formulating any substantial question of law.

16. In the case of Joseph Severance v. Benny Mathew, (2005) 7 SCC 667, this Court again took the view that the High Court would not be competent to reverse the finding recorded by the trial court or the first appellate court without formulating substantial question of law.

17. In State of Kerala vs. Puthenkavu N.S.S. Karayogam, (2001) 10 SCC 191, a second appeal was filed against the concurrent finding recorded by both the trial court and the first appellate court. However, the High Court, exercising jurisdiction under Section 100, CPC interfered with the concurrent finding of facts and allowed the appeal. This Court set aside the order holding that the judgment of the High Court cannot be sustained inasmuch as it reverses the judgment without formulating substantial question of law. The Court observed, thus:

> "5. Both sides have advanced several contentions in the appeal petition as also in the counter-affidavit filed. We refrain from expressing any opinion on the merits of the

> case as we propose to remit the second appeal for disposal afresh. We have noted that the learned Single Judge has not formulated any question of law, much less any substantial question of law, which alone would have clothed the High Court with jurisdiction under Section 100 CPC to deal with a second appeal. This Court has stated time and again that unless the High Court is satisfied that there is a substantial question of law, jurisdiction for second appeal cannot be exercised. It is unnecessary to cite the authorities on that aspect as it has now become well-nigh settled. Both sides agreed that no substantial question of law has been formulated by the learned Single Judge. If so, the learned Single Judge ought to have proceeded further."

18. In the case of Ellangallur vs. Gopalan, (2000) 2 SCC 11, this Court, considering a case where the High Court in second appeal reversed the finding of the first appellate court on the re-appreciation of evidence without formulating any substantial question of law, held that the judgment passed by the High Court cannot be sustained in view of the prescribed procedure of Section 100 of the Code of Civil Procedure. Same view has been reiterated by this Court in the case of H.G. Venkataramanaiah vs. Subba Pujari, (2000) 10 SCC 412.

19. Similar view has been reiterated in the case of Ramavilasom Grandhasala vs. N.S.S. Karayogam, (2000) 5 SCC 64, wherein it was held that the High Court without formulating any substantial question of law as required under sub-section (4) of Section 100 of the Code cannot allow second appeal and set aside the judgment of the lower court.

20. In the light of the provision contained in Section 100 CPC and the ratio decided by this Court, we come to the following conclusion:-

> (i) On the day when the second appeal is listed for hearing on admission if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the second appeal without even formulating the substantial question of law;
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> (ii) In cases where the High Court after hearing the appellate is satisfied that the substantial question of law is involved, it shall formulate that question and then the appeal shall be heard on those substantial question of law, after giving notice and opportunity of hearing to the respondent;
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> (iii) In no circumstances the High Court can reverse the judgment of the trial court and the first appellate court without formulating the substantial question of law and complying with the mandatory requirements of Section 100 CPC.

21. Admittedly, the High Court by the impugned judgment allowed the appeal and reversed the judgment passed by the trial court and the first appellate court. We have, therefore, no option but to set aside the impugned judgment passed by the High Court and remit the matter back to the High Court to first formulate the substantial question of law and then decide all these appeals in accordance with law.

22. Hence, we allow these appeals and remit these matters back to the High Court to first formulate substantial question of law and then decide all these appeals in accordance with law accordingly.

23. Since the plaintiff-respondents are old persons aged more than 75 years and they have been fighting the litigation since 1992, we request the High Court to give preference of hearing to these appeals and decide the same as expeditiously as possible preferably within a period of four months from today.

24. However, interim order passed by this Court shall continue only for a period of four months from today.

25. After hearing the respondents, who appeared in person before this Court today and informed about their financial status, we request the Maharashtra Legal Services Authority to provide all legal assistance to them and to meet all legal expenses in defending the second appeals in the High Court.

26. In the peculiar facts and circumstances of the case and considering the helplessness of the respondents who are old aged persons, we direct the appellant to pay a sum of Rs.25,000/- (Rupees Twenty Five thousand only) towards the legal expenses incurred by them in pursuing the case in this Court.

27. Mr. Vigya, learned counsel for the appellant, very fairly submits that the appellant be allowed some time to pay the aforesaid amount to the respondents.

28. As prayed for, two weeks' time is allowed to the appellant to pay the aforesaid amount to the respondents.

29. The Registry is directed to communicate this Order to the Bombay High Court forthwith.

.....J. (M.Y. EQBAL) .....J. (C. NAGAPPAN) NEW DELHI, OCTOBER 27, 2015