

GAHC010006532009



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : RSA/175/2009

SRI MADHUSUDAN MAHANTA
S/O SRI BAPUKAN MAHANTA, R/O SAULKUCHI, DIST. KAMRUP, ASSAM.

VERSUS

UNITED INDIA INSURANCE CO. LTD. and 4 ORS
HEAD OFFICE-24, WHITES ROAD, CHENNAI.

2:THE CHAIRMAN

UTI CO. LTD. HEAD OFICE 24 WHITE ROAD
CHENNAI.

3:REGIONAL MANGER

UTI CO. LTD. G.S. ROAD
GUWAHATI.

4:THE DIVISIONAL MANAGER

UTI CO. LTD. TEZPUR REGIONAL OFFICE
M.C. ROAD
TEZPUR
SONITPUR.

5:THE BRANCH MANAGER

UTI CO. LTD.
N. LAKHIMPUR
DIST. LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR.N BORAH

Advocate for the Respondent :

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. N. Borah,
Advocate.

For the Respondents : Mr. S. Dutta,
Sr. Advocate.

Date of Hearing : 20.02.2024.

Date of Judgment : 20.04.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. N. Borah, learned counsel appearing for the appellant as well as Mr. S. Dutta, learned senior counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) where the judgment dated 07.05.2009 passed by the learned District Judge, North Lakhimpur in Money Appeal No.01/2008, is under challenge.

3. The appellant was doing the business of production and supply of Muga Cocoons. He had taken a house on rent at Ghilamara, in the district of North Lakhimpur. He was paying the house rent at the rate of ₹50/- per month. Apart from staying in the house, he used that house as a godown to store Muga Cocoons. He purchased a Fire Insurance Policy for the house.

4. On 16.01.2001, while the appellant was at Sualkuchi in the district of Kamrup, the rented house at Ghilamara was gutted in fire. Upon getting the information, the appellant went to Ghilamara and finally staked the claim before the Insurance Company. The Insurance Company repudiated the claim of the appellant.

5. The appellant approached the Ombudsman of the Insurance Company who

awarded a sum of ₹25,000/- to him as *ex gratia* compensation. The Insurance Company was not paying the appellant the said compensation. Therefore, the appellant approached this Court by filing a writ petition. On the basis of an order of this Court, the Insurance Company paid the appellant the sum of ₹25,000/-.

6. The appellant thereafter, approached the Consumers Forum and the said case was dismissed on account of non prosecution.

7. Finally, the appellant filed the present suit praying for recovery of ₹4,30,912.55 from the Insurance Company.

8. The Insurance Company has admitted everything. The Insurance Company has claimed that it investigated the matter and found several things. The first thing that was discovered was that the appellant had lied while he claimed to be a resident of Ghilamara. According to the Insurance Company, the appellant was residing at Sualkuchi in the district of Kamrup.

9. The Insurance Company further discovered that the rented house which was gutted in fire, was actually a cowshed and it was never used as a godown to store Muga Cocoons.

10. On the basis of the pleadings, the trial court framed the following issues:

- I. Whether there is any cause of action for the suit?
- II. Whether the suit is barred by law of limitation?
- III. Whether the suit is barred by res judicata?
- IV. Whether the godown belonging to the plaintiff was insured by United India Insurance Company Limited?
- V. Whether the alleged godown was used for the purpose of storing cocoons at the time of the incident and the said godown contained any stocks (sic)?
- VI. Whether the grounds of repudiation of plaintiff's claim was proper and appropriate?

VII. Whether the plaintiff is entitled to get compensation and the reliefs as prayed for?

11. During the trial, the appellant examined three witnesses and the respondent Insurance Company examined one witness. On the basis of the evidence on record, the trial court decreed the suit of the appellant.

12. The Insurance Company filed the first appeal in the court of the District Judge, Lakhimpur. The appellate court reversed the trial court's judgment.

13. I have gone through the judgment of the first appellate court.

14. I have considered the submissions made by the learned counsel of both sides.

15. The Supreme court in *Malluru Mallappa v. Kuruvathappa*, (2020) 4 SCC 313 has held as under—

“16. In *Vinod Kumar v. Gangadhar* [Vinod Kumar v. Gangadhar, (2015) 1 SCC 391 : (2015) 1 SCC (Civ) 521] this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under : (SCC p. 395, para 15)

“15. Again in *B.V. Nagesh v. H.V. Sreenivasa Murthy* [B.V. Nagesh v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808] , this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words : (SCC pp. 530-31, paras 3-4)

‘3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The 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 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 decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court [*H.V. Sreenivasa Murthy v. B.V. Nagesha*, 2008 SCC OnLine Kar 837] to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (*Vide Santosh Hazari v. Purushottam Tiwari* [*Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179], SCC p. 188, para 15 and *Madhukar v. Sangram* [*Madhukar v. Sangram*, (2001) 4 SCC 756], SCC p. 758, para 5.)”

- 16.** In *Shasidhar v. Ashwini Uma Mathad* [*Shasidhar v. Ashwini Uma Mathad*, (2015) 11 SCC 269], it was held as under : (SCC p. 277, para 21)-

“21. Being the first appellate court, it was, therefore, the duty of the High Court [*Shasidhar v. Ashwini Uma Mathad*, 2012 SCC OnLine Kar 8774] to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.”

- 17.** In *Manjula v. Shyamsundar*, (2022) 3 SCC 90 the Apex Court has held as under—

“8. Section 96 of the Civil Procedure Code, 1908 (for short “CPC”) provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

- (a) points for determination;

- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled."

18. Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment.

19. The framing of points for determination by the Appellate Court is only to enable it to concentrate and rivet its attention on the controversy between the parties and to facilitate the weighing and balancing of the evidence, facts and considerations appearing on both sides and to arrive at a conclusion on the merits of the controversy.

20. The provisions of Order 41, Rule 31 of the Code of Civil Procedure are mandatory and if the judgment of the Appellate Court does not follow the provisions of Order 41, Rule 31, the judgment is vitiated.

21. Reverting the case in hand, I find that the first appellate court failed to draw up a point for determination and failed to answer all the issues. For this reason, the first appellate court judgment is not sustainable in law.

22. Therefore, the appeal is allowed. The impugned first appellate court judgment is set aside.

23. The case is remanded to the learned District Judge, Lakhimpur, North Lakhimpur for passing a fresh judgment in accordance with the procedure as laid down under Order 41 Rule 31 of the Code, albeit after hearing oral arguments of both sides.

Send back the LCR.

JUDGE

Comparing Assistant