

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 57 OF 2011**

1 Mr Jacob Lawrence Agnelo D'Mello
Major of age, married, businessman,
and his wife,

2 Mrs Maria Purificacao Fielinha D'Mello
Major of age, married,
Housewife,
Both r/o Saipem,
Candolim, Bardez Goa.

..... Appellants

Versus

State Bank of India
A body corporate constituted
Under the State Bank of India Act, 1955
and having one of its branches at
Calangute, Bardez Goa.

.....Respondent

None for the Appellants or Respondent.

CORAM: M. S. SONAK, J.

DATED: 19th APRIL 2024

ORAL JUDGMENT

1. None for the Appellants or Respondent.
2. This is the Second Appeal of the year 2011.
3. This Second Appeal was admitted on 12.01.2012 only on the following substantial question of law:

(a) Whether the impugned Judgment passed by the learned Lower Appellate Court stands vitiated for non-compliance of Order 41 Rule 31 of the Civil Procedure Code?

4. When this Second Appeal was admitted, there was no appearance on behalf of the Respondent/State Bank of India.
5. The record shows that the Respondent-Bank instituted Special Civil Suit No.21/93/A/IISR against the Appellants herein for recovery of the loan amount (overdraft facility) availed of by the Appellants to the extent of ₹8,88,330/- with interest at the rate of 15% per annum with quarterly rests.
6. The only defence raised by the Appellants was that fixed deposit receipts secured this overdraft facility. The Appellants claim that if the Bank had encashed the fixed deposit receipts, their liability to pay this amount with interest would have considerably reduced.
7. Accordingly, the trial Court by its judgment and decree dated 30.04.2001, made the following order:

“ORDER

The plaitiffs shall deduct amount of Rs.12,16,483/- (Rupees twelve lakhs sixteen thousand four hundred and eighty three only) from

the suit F.D.Rs towards their dues owed by the defendants till the maturity date in the year 1993 and dues if any on account of the suit loans, the plaintiffs shall be entitled to interest as agreed at the rate of 15% per annum for the first loan and interest at the rate of 17.5% per annum on the second loan from the defendants till final payment.

Parties to bear their own cost in the circumstances.

Decree to be drawn accordingly.”

8. The Respondent-Bank appealed vide Regular Civil Appeal No.222/2010. By judgment and decree dated 30.08.2010, this appeal was partly allowed, and the Appellants herein were directed to make payment of ₹4,83,567.65 paise with interest at the rate of 15% per annum to be calculated with yearly rests from 08.02.1993 till final payment. The Appeal Court noted that the FDRs were no longer in existence; therefore, the trial Court could not be enforced as made and needed to be modified.

9. As noted earlier, the only ground on which this appeal admitted was the alleged non-compliance to the provisions of Order 41 Rule 31 of the Civil Procedure Code.

10. The Order 41 Rule 31 of the CPC reads as follows:

*“31. Contents, date and signature of judgment.-
The judgment of the Appellate Court shall be in writing and 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, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”*

11. On perusal of the impugned judgment and decree dated 30.08.2010 made by the First Appellate Court, it is seen that in Para 7, the First Appellate Court framed the point which arose for determination. Merely because only one point arose for determination and such a point was framed by the First Appellate Court, it cannot be said that there was any breach in framing the "*point for determination*".

12. Para 7 of the First Appellate Court's impugned judgment and decree reads as follows:

“7. I have gone through the records of the lower Court. I have also gone through the judgment and decree of the lower Court. I have considered the arguments advanced by both the sides and also the ruling relied by the appellant’s lawyer. The point which arises for determination is that whether the appellant was entitled to encash the fixed

deposit receipts which were kept with the appellant before its maturity and appropriate the amount towards the loan account of the respondent? My findings are as follows:”

13. The First Appellate Court was justified in holding that the above point was the only point that arose for determination. From the pleadings in the suit and the contentions raised before the trial Court, it is apparent that this was the main defence raised by the Appellants.

14. Besides, the First Appellate Court, after framing the above point for determination, has given its decision, with reasons. The First Appellate Court, after varying the trial Court's judgment and decree, has specified the relief which the Appellants before it were entitled to. Thus, in this case, there was compliance with the provisions of Order 41 Rule 31 of the CPC.

15. Considering the above position and the fact that the only substantial question of law framed by this Court concerns the alleged non-compliance with the provisions of Order 41 Rule 31 of CPC, such substantial question of law will have to be answered against the Appellants and favouring the Respondent.

16. For the above reasons, this appeal is dismissed. There shall be no order for costs.

M. S. SONAK, J.