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For Petitioner(s) : Mr. RK Mathur, Sr. Adv. with
Mr. Aditya Kiran Mathur

For Respondent(s) : Mr. Saurabh Bhandari
Mr. Arun Singh Shekhawat
Mr. Saparsh Bansal for
Mr. Akshay Sharma, AGC
Mr. Aditya Matoli &
Mr. Daulat Sharma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON : 21/11/2023

PRONOUNCED ON : 06/12/2023

Order

REPORTABLE

BY THE COURT:

1. This petition arises from the judgment dated 15.12.2022 passed by the Board of Revenue (for short 'the



Board') by which the appeal filed by the respondents has been allowed and the judgment and decree dated 28.10.2014 passed by the Revenue Appellate Tribunal, Jaipur (for short 'the RAA') has been quashed and set aside and the matter has been remanded back to decide the same afresh while recording finding on every each issues involved in the matter.

2. Learned counsel for the petitioner submits that while passing the judgment and decree dated 28.10.2014, the RAA has recorded a cogent finding on issue Nos.1 to 3. Counsel submits that the RAA has passed the judgment dated 28.10.2014, after appreciating the evidence available on the record and the same has been quashed by the Board erroneously, on the technical count that RAA has not decided the appeal by formulating the issues and point wise consideration in terms of Order 41 Rule 31 CPC and there was no occasion or reason available with the Board to remand the matter back to the RAA for rewriting of the judgment. Counsel submits that the entire evidence and material was available with the Board and the Board itself could have decided the matter on its merits, instead of remanding it back to the RAA for re-writing of the judgment. Counsel submits that the remand order would unnecessarily prolong the decision of the litigation. Counsel submits that while going beyond the parameters of remand, which are contained under Order 41 Rule 23, 23A, 24 and 25 CPC, the order impugned has been passed, which is not sustainable in the eye of law and the same is contrary to the following judgments passed by the Hon'ble Apex Court in the case of:





1. **Arvind Kumar Jaiswal (D) Thr. Lr. vs. Devendra Prasad Jaiswal Varun** reported in **2023 (2) R.C.R. (Civil) 77.**
2. **Shivkumar and Others vs. Sharanabasappa and Others** reported in **(2021) 11 SCC 277.**
3. **Bachan Devi and Another vs. Nagar Nigam, Gorakhpur and Another,** reported in **(2008) 12 SCC 372.**
4. **Niranjan Lal vs. UIT, Alwar and Others** reported in **2007 (1) RLW 350.**



3. Counsel submits that in view of the submissions made hereinabove, interference of this Court is warranted and the order impugned passed by the Board is liable to be quashed and set aside. Counsel submits that while setting aside the order passed by the Board, a direction may be issued to the Board to decide the appeal on its merits and on the basis of the material available.

4. Per contra, learned counsel for the respondents opposed the arguments, raised by the counsel for the petitioner and submitted that while deciding the appeal, the RAA has not formulated the points of determination in terms of Order 41 Rule 31 CPC. Counsel further submits that no finding was recorded by the RAA, after framing the issues and determining the points for consideration and the judgment has been passed in a cursory manner. Counsel submits that the Board has not committed any error in setting aside the impugned judgment dated 28.10.2014 passed by the RAA. Counsel submits that a logical order has been passed by the Board remanding the matter back to the RAA to decide it afresh, on the basis of the evidence available on record, on all the issues framed in the matter. Counsel submits that under



these circumstances, interference of this Court is not warranted. In support of his contentions, he has placed reliance upon the following judgments passed by the Hon'ble Apex Court in the case of:

1. **G. Saraswathi vs. Rathinammal** reported in AIR (2018) SCW 949.
2. **Shasidhar vs. Ashwini Uma Mathad** reported in (2015) AIR (SCW) 777.
3. **Malluru Mallappa (D) Thr. LRS. vs. Kuruvathappa and Ors.** reported in **(2020) AIR (SC) 925.**

5. Counsel submits that the order passed by the Board is just and proper which needs no interference of this Court.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. The issue involved in this petition is "Whether it is necessary for the First Appellate Court to decide the appeal in accordance with the procedure contained under Order 41 Rule 31 CPC?".

8. The factual background of the case is that the plaintiffs/respondents filed a suit for permanent injunction and declaration of Khatedari rights before the Court of Assistant Collector, Jaipur City I, wherein nine issues were framed on the basis of the pleadings of both the parties and after appreciating the evidence of both the sides, all the issues were decided and suit was partly decreed vide judgement and decree dated 19.11.2010, in favour of plaintiffs - respondents.



9. Feeling aggrieved by the judgment and decree dated 19.11.2010, the petitioner submitted an appeal under Section 223 of the Rajasthan Tenancy Act, 1955 (for short, "the R.T. Act") before the RAA and without formulating the points for determination, the RAA allowed the appeal vide judgement dated 28.10.2014 and set aside the judgment and decree dated 19.10.2010.

10. Aggrieved by the impugned judgment dated 28.10.2014, the respondents submitted Second Appeal under Section 224 of the R.T. Act before the Board and the same was allowed vide judgment dated 15.12.2022, in the light of the provisions contained under Order 41 Rule 31 CPC and the matter was remanded back to RAA to decide the appeal afresh by deciding all the issues on the basis of evidence. The Board was of the view that, while passing the judgment dated 28.10.2014, the RAA has not followed the mandatory provisions contained under Order 41 Rule 31 CPC and without formulating the points for determination and without giving reason on these points, the decision has been rendered without deciding the appeal on each issue.

11. It is settled proposition of law that the appeal is continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves re-hearing on law as well as on fact and is invoked by the aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law, decided by the trial court, are open for re-consideration. Therefore, the first appellate court is required to address itself on all the issues and decide the case by giving cogent reasons. The





court of first appeal must record its findings only after dealing with all the issues of law as well as facts and with all the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings, supported by reasons on all the issues and contentions.

12. Order 41 Rule 31 of the CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order 41 Rule 31 of the CPC is as under: -

"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."

13. It is clear from mere reading of the Rule 31(a) to (d) that it makes it legally obligatory upon the Appellate Court as to what should the judgment of the Appellate Court contain.

14. Sub-clause (a) provides that the judgment must formulate and state the points arising in the case for determination. Sub-clause (b) provides that the Court must give decision on such points and sub-clause (c) provides that the judgment shall state the reasons for the decision. So far as sub-clause (d) is concerned, it applies in those cases where the



Appellate Court has reversed the decree. In such case, the Court has to specify the relief to which the appellant has become entitled to as a result of the decree having been reversed in appeal at his instance.

15. While deciding the appeal, the Appellate Court has to ensure compliance of the requirements of Order 41 Rule 31 CPC.

16. **In Vinod Kumar v. Gangadhar** reported in **2015 (1) SCC 391**, the Hon'ble Apex Court has reiterated the principles to be borne in mind while disposing of the first appeal in para 15 and the same is reproduced as under:

"15. Again in [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:

"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 41 CPC 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 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.



17. **In Shasidhar and Ors. v. Ashwani Uma Mathad and Anr** reported in **2015 (11) SCC 269**, the Hon'ble Supreme Court has held in para 21 as under:

"21. Being the first appellate court, it was, therefore, the duty of the High Court 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. In the case of **Malluru Mallappa (Dead) through Legal Representatives vs. Kuruvathappa and Ors.** reported in **2020 (4) SCC 313**, Hon'ble Apex Court has held in para 18, 19 and 20 as under:-

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 (2015) 11 SCC 269 with the requirement of Order XLI 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 trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

19. Keeping in mind the above principles, let us examine the present case. As stated above, the issue relating to readiness and willingness of the plaintiff to perform his part of the contract and issue relating to limitation were held against the plaintiff and the suit was accordingly dismissed. The appeal before the High Court involved both disputed questions of law and fact. The High Court without examination of any of these aspects has dismissed the appeal by a cryptic order. The court below has neither reappreciated the evidence of the parties, nor it has passed a reasoned order. The High Court has failed to follow the provisions of Order XLI Rule 31 of the CPC while deciding the appeal. Mr. Bhat has argued that the suit was well within time under [Article 54](#) of the Schedule to the [Limitation Act](#). Even this question has not been examined in its proper perspective.

20. In the result, the appeal succeeds and is accordingly allowed in part. The judgment and decree of the High Court in RFA No.1731 of 2006 dated 09.02.2012, is set aside and the matter is remanded to the High Court for fresh disposal in accordance with law.

19. The Hon'ble Apex Court in the case of **G. Saraswathi** (**supra**) has held in para 13, 14 and 15 as under:

"13. Indeed, in the absence of any application of judicial mind to the factual and legal controversy involved in the appeal and further without even mentioning the factual narration of the case set up by the parties, the findings of the two Courts as to how they dealt with the issues arising in the case in



their respective jurisdiction and without there being any discussion, appreciation, reasoning and categorical findings on the issues and why the findings of two Courts below deserve to be upheld or reversed, while dealing with the arguments of the parties in the light of legal principles applicable to the case, it is difficult for this Court to sustain such order of the Division Bench. In our opinion, the disposal of the LPA by the Division Bench of the High Court cannot be said to be in conformity with the requirements of Order 41 Rule 31 of the Code of Civil Procedure, 1908(hereinafter referred to as "the Code").

14. Time and again, this Court has emphasized on the Courts the need to pass reasoned order in every case which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings on all the issues in support of its conclusion. It is really unfortunate that the Division Bench failed to keep in mind this principle while disposing of the appeal and passed a cryptic and unreasoned order. Such order undoubtedly caused prejudice to the parties because it deprived them to know the reasons as to why one party has won and other has lost. We can never countenance the manner in which such order was passed by the High Court which has compelled us to remand the matter to the High Court for deciding the appeal afresh on merits.

15. In the light of the foregoing discussion, we allow the appeal, set aside the impugned order and remand the case to the Division Bench of the High Court for deciding the appeal afresh on merits in accordance with law keeping in view our observations made supra."

20. Hon'ble Apex Court has consistently emphasized the need for assigning reasons in support of its conclusion and while doing so the Court must deal with all the issues raised by the parties to the lis. Indeed, the Hon'ble Apex Court has made the



following very pertinent observations on this issue in **Union of India & Ors. Vs. Jai Prakash Singh & Ors., (2007) 10 SCC**

712 which read as under:

"7.11. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

12....Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."

21. The Appellate Court is supposed to pass a reasoned judgment keeping with the requirements of Order 41 Rule 31 CPC. Indeed, this being a mandatory requirement of law, it's non-compliance by the Appellate Court renders the judgment bad in law.

22. In the light of the judgments passed by the Hon'ble Supreme Court, this Court finds no force in the arguments raised





by the counsel for the petitioner, that while deciding the second appeal, the Board of Revenue could have decided the appeal, on its merits, without remanding the matter to the First Appellate Court i.e., the RAA, because the RAA has not decided the first appeal in accordance with the mandatory provisions contained under Order 41 Rule 31 CPC. Hence the judgement passed by the RAA was in contravention of the procedure contained under Order 41 Rule 31 CPC without considering the value of the mandatory provision of Order 41 Rule 31 CPC. The Hon'ble Apex Court in the matter of **G. Saramathi (Supra)** and **Mallani Mallapa (Supra)**, has not only quashed the judgment passed by the First Appellate Court but also remanded the same to the First Appellate Court to decide the appeal on merits, after following the provisions of Order 41 Rule 31 CPC.

23. The First Appellate Court should be reminded that the mandate of Code of Civil Procedure is that the First Appellate Court is the last authority to revisit the facts and the first appellate proceedings is a continuation of suit, as such it is expected that the First Appellate Court should give a categorical finding on the relevant issues and grant such relief to the concerned in accordance with law. While deciding an appeal, the First Appellate Court is required to adhere the mandate contained under Order 41 Rule 31 CPC.

24. The judgment passed by RAA does not satisfy the requirement of Order 41 Rule 31 CPC, hence it is legally unsustainable. Hence, the Board of Revenue has rightly directed the RAA, to decide the issues, on the basis of the evidence available on the record.



25. This Court finds no illegality in the judgment dated 15.12.2022 passed by the Board of Revenue. Hence, this petition is found to be devoid of merits and the same is hereby dismissed.

26. Stay application and all application (pending, if any) also stand dismissed. No costs.

(ANOOP KUMAR DHAND),J

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