

[2023 LiveLaw \(SC\) 688](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.V. NAGARATHNA; J., UJJAL BHUYAN; J.
AUGUST 07, 2023

CIVIL APPEAL NO. OF 2023 @ SLP (C) No.12163 of 2023

BHAGYASHREE ANANT GAONKAR versus NARENDRA@ NAGESH BHARMA HOLKAR & ANR.

Code of Civil Procedure, 1908; Section 100 - High Court cannot admit regular second appeal without framing substantial questions of law.

(Arising out of impugned final judgment and order dated 06-01-2023 in RSA No. 5085/2011 passed by the High Court of Karnataka Circuit Bench at Dharwad)

For Petitioner(s) Mr. V. Chitambaresh, Sr. Adv. Mr. Ankolekar Gurudatta, AOR Mr. Rajendra Koushik Ac, Adv. Mr. Korada Pramod Kumar, Adv.

For Respondent(s) M/S. Dharmaprabhas Law Associates, AOR Mr. Chandrashekhar A. Chakalabbi, Adv. Mr. S.k. Pandey, Adv. Mr. Awanish Kumar, Adv. Mr. Anshul Rai, Adv. Mr. Abhinav Garg, Adv.

ORDER

Though this special leave petition is listed for admission, with the consent of the learned senior counsel for the petitioner, Sri V. Chitambaresh and learned counsel for the first respondent-caveator (the second respondent being the power of attorney holder of the petitioner herein), it is heard finally.

Leave granted.

The judgment of the High Court of Karnataka dated 06.01.2023 passed in Regular Second Appeal No.5085 of 2011 is called into question in this appeal.

The main contention raised by learned senior counsel for the appellant, Sri V. Chitambaresh, is that the High Court has lost sight of the fact that it was dealing with a regular second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, "CPC") and disposed of the second appeal as if it was a regular first appeal. In other words, no substantial questions of law, which ought to have been framed and answered in the regular second appeal, were even raised in the impugned judgment, let alone answered. It was next submitted that the regular second appeal must be considered only on substantial questions of law, but the High Court has considered the said appeal as if it was a first appeal and gone into details of the evidence, etc. In the circumstances, learned senior counsel for the appellant submitted that the impugned judgment may be set aside and the matter may be remanded to the High Court for a fresh adjudication.

In this regard, learned senior counsel Sri V. Chitambaresh relied upon judgments of this Court in the case of **C.A. Sulaiman vs. State Bank of Travancore, Alwayee (2006) 6 SCC 392, State Bank of India vs. S.N. Goyal (2008) 8 SCC 92** and **Raghavendra Swamy Mutt v. Uttaradi Mutt, (2016) 11 SCC 235**.

Per contra, learned counsel appearing for the respondent supported the judgment and decision arrived at by the High Court on merits and contended that although the High Court raised no substantial question of law, yet, the reasoning and the conclusion of the High Court is justified. That in the facts of this case, there may be no interference with the impugned judgment and decree.

We have considered the contentions advanced at the Bar in light of the requirements of Section 100 of the CPC. It is trite that the exclusive jurisdiction of the High Court to deal with a regular second appeal is stipulated in Section 100 of the CPC, which

grants power to the High Court to consider a regular Second Appeal only on a substantial question of law. This would clearly indicate that the First Appellate Court is the final court on questions of facts but only if there is any substantial question of law, a second appeal could be considered and raised by the High Court and such substantial question(s) of law ought to be answered. In fact, it is the practice and a mandatory requirement that at the time of admitting the regular second appeal, substantial question(s) of law must be framed, on the basis of which the arguments must be advanced and a decision given thereon. It is also permitted that once the arguments have been advanced, the court is at liberty to re-frame or frame fresh substantial questions of law and answer the same on hearing the learned counsel for the respective parties for immediate reference Section 100 of the CPC extracted as under:

“100. Second appeal.—(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.”

The law on the practice to be followed while considering a regular second appeal, have been re-iterated by this Court, and the relevant extracts in this regard are expounded as under:

a. ***Roop Singh v. Ram Singh, (2000) 3 SCC 708***, as relied upon in ***C.A. Sulaiman vs. State Bank of Travancore, Alwayee (2006) 6 SCC 392***:

“7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC.”

b. ***State Bank of India vs. S.N. Goyal (2008) 8 SCC 9215***:

“15. It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:

(a) Admitting a second appeal when it does not give rise to a substantial question of law.

(b) Admitting second appeals without formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as “whether on the facts and circumstances the judgment of the first appellate court calls for interference” as the substantial question of law.

(d) Failing to consider and formulate relevant and appropriate substantial question(s) of law involved in the second appeal.

(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.

(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.

(g) Deciding second appeals by reappreciating evidence and interfering with findings of fact, ignoring the questions of law.

These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this Court and remands by this Court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected as not involving substantial questions of law.”

c. ***Municipal Committee, Hoshiarpur v. Punjab SEB, (2010) 13 SCC 216:***

“16...A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same.

d. ***Umerkhan v. Bismillabi, (2011) 9 SCC 684:***

“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.”

e. ***Raghavendra Swamy Mutt v. Uttaradi Mutt, (2016) 11 SCC 235***

“18. In the instant case, the High Court has not yet admitted the matter. It is not in dispute that no substantial question of law has been formulated as it could not have been when the appeal has not been admitted. We say so, as appeal under Section 100 CPC is required to be admitted only on substantial question/questions of law. It cannot be formal admission like an appeal under Section 96 CPC. That is the fundamental imperative. It is peremptory in character, and that makes the principle absolutely cardinal.”

At this stage, it would be apposite to refer to the judgement of the Karnataka High Court, rendered by one of us (Nagarathna J) in ***Raghavendra Swamy Mutt v. Utaradi Mutt, 2016 SCC OnLine Kar 473***. The Karnataka High Court had disposed of an I.A. No. 1/2016 filed in RSA No. 100446/2015 by the Respondent therein against the favourable interim order dated 16.12.2015 granted to Petitioner without the issuance of notice. The High Court pointed out that in the interim order allowing the application filed by the

appellant, the satisfaction of the court on any substantial question of law had not been recorded.

The judgement was upheld in appeal by this court in ***Raghavendra Swamy Mutt v. Uttaradi Mutt, (2016) 11 SCC 235*** while observing that:

“24. It is clear as day that the High Court cannot admit a second appeal without examining whether it raises any substantial question of law for admission and thereafter, it is obliged to formulate the substantial question of law. Solely because the Court has the jurisdiction to pass an ex parte order, it does not empower it not to formulate the substantial question of law for the purpose of admission, defer the date of admission and pass an order of stay or grant an interim relief. That is not the scheme of CPC after its amendment in 1976 and that is not the tenor of precedents of this Court and it has been clearly so stated in Ram Phal [Ram Phal v. Banarasi, (2003) 11 SCC 762] . Therefore, the High Court has rectified its mistake by vacating the order passed in IA No. 1 of 2015 and it is the correct approach adopted by the High Court. Thus, the impugned order is absolutely impregnable.”

In the instant case, we find that the High Court has not adverted to the substantial questions of law which may have been framed in the appeal inasmuch as there is no reference to the same in the impugned judgment. It is noted that the appeal is of the year 2011 and the impugned judgment is dated 06.01.2023. Perhaps the appeal may have been admitted on the framing of certain substantial questions of law which have been totally ignored by the High Court while disposing of the second appeal. Consequently, the second appeal has been disposed of as if it was a first appeal.

In the circumstances, we deem it just and proper to set aside the impugned judgment of the High Court and remand the matter to the High Court for a fresh consideration after ascertaining whether substantial questions were framed at the time of admitting the matter and if not, to frame the substantial questions of law on hearing the learned counsel for the respective parties and thereafter to dispose of the second appeal in accordance with law.

The civil appeal is allowed and disposed of in the aforesaid terms.

Pending applications if any, shall also stand disposed of.

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