

SHEEL CHAND
v.
PRAKASH CHAND

SEPTEMBER 1, 1998

[DR. A.S. ANAND AND B.N. KIRPAL, JJ.]

Code of Civil Procedure, 1908 :

S.100—Second appeal—Scope of—Non-residential premises—Landlord seeking eviction of tenant on ground of bona fide need—Concurrent finding of fact by trial court and appellate court that need of landlord was not bona fide—High Court in second appeal, reversing the finding—Held, existence of a ‘substantial question of law’ is sine qua non for exercise of jurisdiction by High Court, which unjustifiably interfered with pure questions of fact—Rent and Eviction.

Panchugopal Barua v. Umesh Chandra Goswami, [1997] 4 SCC 713; Kshitish Chandra Purakait v. Santosh Kumar Purkait and Others, [1997] 5 SCC 438, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14738 of 1996.

From the Judgment and Order dated 13.9.96 of the Madhya Pradesh High Court in S.A. No. 156 of 1994.

M.L. Varma, Vivek Gambhir and D.P. Chaturvedi for the Appellant.

S.S. Khanduja and B.K. Satija for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave is directed against the judgment of the High Court dated 13th September, 1996.

Appellant is the tenant. Respondent is the landlord. The premises had been let out by the predecessor-in-interest of the present respondent-landlord in 1968. The suit for eviction was filed against the tenant by the respondent-landlord on various grounds including the ground that he required the suit premises for his *bona fide* personal need for starting his

A business. It was the case of the respondent - landlord that though he was an advocate, he wanted the suit shop for starting his business of a 'General Store' as he did not intend to practice law. The suit was resisted. The trial court after framing issues and recording evidence came to the conclusion that the need of the landlord was not genuine or *bonafide*. The suit was dismissed. Landlord's appeal before the appellate authority failed and the finding recorded by the trial court of the effect that the need of the landlord was not *bona fide* or genuine was confirmed. The landlord thereupon filed a second appeal in the High Court. By the impugned order the concurrent findings of fact were set aside by the learned Single Judge of the High Court in second appeal.

C We have heard learned counsel for the parties.

The learned Single Judge while admitting the second appeal under Section 100 CPC framed the following question of law:-

D 'Whether the finding relating to *bonafide* requirement of the appellant of the Courts below is vitiated due to irrelevant consideration and not under law?'

E In *Panchugopal Barua v. Umesh Chandra Goswami*, [1997] 4 SCC 713 to which one of us (Anand, J.) was a party, explaining the scope of Section 100 CPC, it was observed :-

F "7. A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 Amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso to the section shows that nothing 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 the court is satisfied that the case involves such a question.

G The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. The existence of a 'substantial question of law' is thus, the *sine qua non* for the exercise of the jurisdiction under the amended provisions of Section 100 CPC."

H

The above judgment was approved by a three Judge Bench of this Court in *Kshitish Chandra Purkait v. Santosh Kumar Purkait and Others*, [1997] 5 SCC 438 wherein it was held :-

"10 We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-Section(5) of Section 100 CPC in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline."

The question of law formulated by the learned Single judge, noticed above, strictly speaking is not even a question of law, let alone a substantial question of law. The existence of a 'substantial question of law', is the *sine qua non* for the exercise of jurisdiction by the High Court under the amended provisions of Section 100 CPC. It appears that the learned Single Judge over looked the change brought about to Section 100 CPC by the Amendment made in 1976. The High Court unjustifiably interfered with pure questions of fact while exercising jurisdiction under Section 100 CPC. It was not proper for the learned Single Judge to have reversed the concurrent findings of fact while exercising jurisdiction under Section 100 CPC. That apart, we find that the learned Single Judge did not even notice, let alone answer the question of law which had been formulated by it at the time of admission of the second appeal. There is no reference to the question of law in the impugned order and it appears that the High Court thought that it was dealing with a first appeal and not a second appeal under Section 100 CPC. The findings of fact recorded by the two courts

A below were based on proper appreciation of evidence and the material on the record. There was no perversity, illegality or irregularity in those findings. None has been brought to our notice by the learned counsel for the respondent either. The findings, therefore, did not require to be upset in a second appeal under Section 100 CPC. The judgment of the learned Single Judge, under the circumstances, cannot be sustained. This appeal consequently succeeds and is allowed. The judgment and order of the High Court dated 13th September 1996 is set aside. As a result, the eviction suit filed by the landlord shall stand dismissed. No costs.

R.P.

Appeal allowed.