A KOPPISETTY VENKAT RATNAM (D) THROUGH LRS.

v.

PAMARTI VENKAYAMMA

(Civil Appeal No.1165 of 2009)

FEBRUARY 23, 2009

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[DALVEER BHANDARI AND HARJIT SINGH BEDI, JJ.]

Code of Civil Procedure, 1908:

C *S.100 after 1976 Amendment – Despite clear enunciation of law by Supreme Court, concurrent findings of fact are disturbed by High Courts without formulating substantial question of law – Remitting such matters lead to loss of several years in the process – For the litigants it is both* D *extremely expensive and time consuming leading to delay in administration of justice in civil matters – In the facts of the case, the second appeal is remitted to High Court which would dispose it of as expeditiously as possible – 54th Report of Law Commission of India.*

E *Bholaram v. Amirchand* **(1981) 2 SCC 414**; *Kshitish Chandra Purkait v. Santosh Kumar Purkait* **(1997) 5 SCC 438**; *Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor* **(1999) 2 SCC 471**; *Sheel Chand v. Prakash Chand* **(1998) 6 SCC 683**; *Kanai Lal Garari v. Murari Ganguly* **(1999) 6 SCC** F **35**; *Panchugopal Barua v. Umesh Chandra Goswami* **(1997) 4 SCC 713**; *Santosh Hazari v. Purushottam Tiwari* **(2001) 3 SCC 179**; *K. Raj and Anr. v. Muthamma* **(2001) 6 SCC 279**; *Ishwar Dass Jain v. Sohan Lal* **(2000) 1 SCC 434**; *Roop Singh v. Ram Singh* **(2000) 3 SCC 708**; *Kamti Devi (Smt.)* G *and Anr. v. Poshi Ram* **(2001) 5 SCC 311**; *Thiagarajan v. Sri Venugopalaswamy B. Koil* **(2004) 5 SCC 762**; *Commissioner, Hindu Religious & Charitable Endowments v. P. Shanmugama* **(2005) 9 SCC 232**; *State of Kerala v. Mohd. Kunhi* **(2005) 10 SCC 139**; *Madhavan Nair v. Bhaskar Pillai*

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(2005) 10 SCC 553; *Harjeet Singh v. Amrik Singh* **(2005) 12 SCC 270;** *H. P. Pyarejan v. Dasappa* **(2006) 2 SCC 496;** *Chandrika Singh (Dead) by LRS & Another v. Sarjug Singh & Another* **(2006) 12 SCC 49;** *Chacko & Another v. Mahadevan* **(2007) 7 SCC 363;** *Bokka Subba Rao v. Kukkala Balakrishna & Others* **(2008) 3 SCC 99;** *Nune Prasad & Others v. Nune Ramakrishna* **(2008) 8 SCC 258;** *Basayyal Mathad v. Rudrayya S. Mathad & Others* **(2008) 3 SCC 120;** *Dharam Singh v. Karnail Singh & Others,* **(2008) 9 SCC 759;** *Narendra Gopal Vidyarthi v. Rajat Vidyarthi,* **2008 (16) SCALE 122 and** *U.R. Virupakshaiah v. Sarvamma & Another,* **2009 (1) SCALE 89, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1165 of 2009.

From the Judgment and Order dated 3.10.2007 of the High Court of Judicature, Andhra Pradesh at Hyderabad in S.A. No. 865 of 1997.

A.T.M. Rangaramanujam, Gouri Karuna Das, Anu Gupta and Rani Jethmalani for the Petitioner.

T.N. Rao, M. Mahapatra and Manjeet Kirpal for the Petitioner.

The following Order of the Court was delivered:

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment dated 3.10.2007 passed by the High Court of Andhra Pradesh at Hyderabad in Second Appeal No.865 of 1997.

3. Learned senior counsel appearing for the appellant raised a preliminary objection that in the impugned judgment, the High Court has set-aside the concurrent findings of facts

A of two courts without formulating any substantial question of law which is mandatory according to Section 100 of the Code of Civil Procedure after 1976 Amendment.

4. There is considerable material which led to 1976 Amendment in the Code of Civil Procedure.
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Legislative Background in the 54th Report of the Law Commission of India submitted in 1973:

5. The comprehensive 54th Report of the Law
C Commission of India submitted to the Government of India in 1973 gives historical background regarding ambit and scope of Section 100 C.P.C. According to the said report, any rational system of administration of civil law should recognize that litigation in civil cases should have two hearings on facts – one
D by the trial court and one by the court of appeal.

6. In the 54th Report of the Law Commission of India, it is incorporated that it may be permissible to point out that a search for absolute truth in the administration of justice, however, laudable, must in the very nature of things be put under
E some reasonable restraint. In other words, a search for truth has to be reconciled with the doctrine of finality. In judicial hierarchy finality is absolutely important because that gives certainty to the law. Even in the interest of litigants themselves it may not be unreasonable to draw a line in respect of the two different
F categories of litigation where procedure will say at a certain stage that questions of fact have been decided by the lower courts and the matter should be allowed to rest where it lies without any further appeal. This may be somewhat harsh to an individual litigant; but, in the larger interest of the administration
G of justice, this view seems to us to be juristically sound and pragmatically wise. It is in the light of this basic approach that we will now proceed to consider some of the cases which were decided more than a century ago.

7. The question could perhaps be asked, why the litigant
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who wishes to have justice from the highest Court of the State should be denied the opportunity to do so, at least where there is a flaw in the conclusion on facts reached by the trial court or by the court of first appeal. The answer is obvious that even litigants have to be protected against too persistent a pursuit of their goal of perfectly satisfactory justice. An unqualified right of first appeal may be necessary for the satisfaction of the defeated litigant; but a wide right of second appeal is more in the nature of a luxury.

8. The rational behind allowing a second appeal on a question of law is, that there ought to be some tribunal having jurisdiction that will enable it to maintain, and, where necessary, re-establish, uniformity throughout the State on important legal issues, so that within the area of the State, the law, in so far as it is not enacted law, should be laid down, or capable of being laid down, by one court whose rulings will be binding on all courts, tribunals and authorities within the area over which it has jurisdiction. This is implicit in any legal system where the higher courts have authority to make binding decisions on questions of law.

9. It may be relevant to recall the statement of Douglas Payne on "Appeals on Questions of Fact" reported in (1958) Current Legal Problem 181. He observed that the real justification for appeals on questions of this sort is not so much that the law laid down by the appeal court is likely to be superior to that laid down by a lower court as that there should be a final rule laid down which binds all future courts and so facilitates the prediction of the law. In such a case the individual litigants are sacrificed, with some justification, on the altar of law-making and must find such consolation as they can in the monument of a leading case.

Historical Perspective:

10. The predecessors of the High Courts in their civil appellate jurisdiction were the Sadar Divani Adalats. The right

A of appeal to the Sadar Divani Adalat was very wide initially, but came to be severely curtailed in the course of time. The "Conwallis Scheme", for example, made provision for two appeals in every category of cases, irrespective of its value. By 1814, this was reduced to one appeal only. Only in cases
B of Rs.5,000 or over, there could be two appeals; one to the Provincial Court of Appeal and second to the Sadar Divani Adalat. As Lord Hastings observed, -

> "The facility of appeal is founded on a most laudable principle of securing, by double and treble checks, the
C proper decision of all suits, but the utopian idea, in its attempt to prevent individual injury from a wrong decision, has been productive of general injustice by withholding redress, and general inconvenience, by perpetuating litigation".

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Arrears:

11. The primary cause of the accumulation of arrears of second appeal in the High Court is the laxity with which second
E appeals are admitted without serious scrutiny of the provisions of Section 100 C.P.C. It is the bounden duty of the High Court to entertain second appeal within the ambit and scope of Section 100 C.P.C.

12. The question which is often asked is why should a
F litigant have the right of two appeals even on questions of law? The answer to this query is that in every State there are number of District Courts and courts in the District cannot be final arbiters on questions of law. If the law is to be uniformly interpreted and applied, questions of law must be decided by
G the highest Court in the State whose decisions are binding on all subordinate courts.

Rationale behind permitting second appeal on question of law:

H 13. The rationale behind allowing a second appeal on a

question of law is, that there ought to be some tribunal having a jurisdiction that will enable it to maintain, and, where necessary, re-establish, uniformity throughout the State on important legal issues, so that within the area of the State, the law, in so far as it is not enacted law, should be laid down, or capable of being laid down, by one court whose rulings will be binding on all courts, tribunals and authorities within the area over which it has jurisdiction. This is implicit in any legal system where the higher courts have authority to make binding decisions on question of law.

14. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the

A appeal;

(iv) Another part of the Section is that the appeal shall be heard only on that question.

15. The fact that, in a series of cases, this court was B compelled to interfere was because the true legislative intendment and scope of Section 100 C.P.C. have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly C misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the D justice has to be administered in accordance with law.

16. When Section 100 C.P.C. is critically examined then, according to the legislative mandate, the interference by the High Court is permissible only in cases involving substantial E questions of law.

Some leading Cases decided after 1976 amendment

17. In *Bholaram v. Amirchand* (1981) 2 SCC 414 a three-Judge Bench of this court reiterated the statement of law. The F High Court, however, seems to have justified its interference in second appeal mainly on the ground that the judgments of the courts below were perverse and were given in utter disregard of the important materials on the record particularly misconstruction of the rent note. Even if we accept the main G reason given by the High Court the utmost that could be said was that the findings of fact by the courts below were wrong or grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law.

18. In *Kshitish Chandra Purkait v. Santosh Kumar* H *Purkait* [(1997) 5 SCC 438], a three judge Bench of this court

held: (a) that the High Court should be satisfied that the case involved a substantial question of law and not mere question of law; (b) reasons for permitting the plea to be raised should also be recorded; (c) it has the duty to formulate the substantial questions of law and to put the opposite party on notice and give fair and proper opportunity to meet the point. The court also held that it is the duty cast upon the High Court to formulate substantial question of law involved in the case even at the initial stage.

19. This court had occasion to determine the same issue in *Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor* (1999) 2 SCC 471. The court stated that the High Court can exercise its jurisdiction under Section 100 C.P.C. only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of the such duly framed substantial questions of law.

20. A mere look at the said provision shows that the High Court can exercise its jurisdiction under Section 100 C.P.C. only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. The impugned judgment shows that no such procedure was followed by the learned Single Judge. It is held by a catena of judgments by this court, some of them being, *Kshitish Chandra Purkait v. Santosh Kumar Purkait* (1997) 5 SCC 438 and *Sheel Chand v. Prakash Chand* (1998) 6 SCC 683 that the judgment rendered by the High Court under Section 100 C.P.C. without following the aforesaid procedure cannot be sustained. On this short ground alone, this appeal is required to be allowed.

21. In *Kanai Lal Garari v. Murari Ganguly* (1999) 6 SCC 35 the court has observed that it is mandatory to formulate the substantial question of law while entertaining the appeal in absence of which the judgment is to be set aside. In

A *Panchugopal Barua v. Umesh Chandra Goswami* (1997) 4 SCC 713 and *Santosh Hazari v. Purushottam Tiwari* (2001) 3 SCC 179 the court reiterated the statement of law that the High Court cannot proceed to hear a second appeal without formulating the substantial question of law. These judgments B have been referred to in the later judgment of *K. Raj and Anr. v. Muthamma* (2001) 6 SCC 279. A statement of law has been reiterated regarding the scope and interference of the court in second appeal under Section 100 of the Code of Civil Procedure.

C 22. In *Ishwar Dass Jain v. Sohan Lal* (2000) 1 SCC 434, this court in para 10, has stated:

> "Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial D question of law and it is not permissible to reverse the judgment of the first appellate court without doing so."

Again in *Roop Singh v. Ram Singh* (2000) 3 SCC 708, this court has expressed that the jurisdiction of a High Court is confined to appeals involving substantial question of law. Para E 7 of the said judgment reads:

> "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 F 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. That apart, at the time of disposing of the matter the High Court did not even notice the question of law formulated by it at G the time of admission of the second appeal as there is no reference of it in the impugned judgment...."

23. Again in *Santosh Hazari v. Purushottam Tiwari (deceased) by LRs.* (2001) 3 SCC 179, another three-Judge H Bench of this court correctly delineated the scope of Section

100 C.P.C.. The court observed that an obligation is cast on the appellant to precisely state in the memorandum of appeal the substantial question of law involved in the appeal and which the appellant proposes to urge before the court. In the said judgment, it was further mentioned that the High Court must be satisfied that a substantial question of law is involved in the case and such question has then to be formulated by the High Court. According to the court the word substantial, as qualifying "question of law", means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code of Article 133(1) (a) of the Constitution.

24. In *Kamti Devi (Smt.) and Anr. v. Poshi Ram* (2001) 5 SCC 311 the court came to the conclusion that the finding thus reached by the first appellate court cannot be interfered with in a second appeal as no substantial question of law would have flowed out of such a finding.

25. In *Thiagarajan v. Sri Venugopalaswamy B. Koil* [(2004) 5 SCC 762], this court has held that the High Court in its jurisdiction under Section 100 C.P.C. was not justified in interfering with the findings of fact. The court observed that to say the least the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendment of the legislature and not frustrate it by excluding the same. This court in a catena of decisions held that where findings of fact by the lower appellate Court are based on evidence, the High Court in second appeal cannot substitute its own findings on reappreciation of evidence merely on the ground that another view was possible.

26. In the same case, this court observed that in a case

A where special leave petition was filed against a judgment of the High Court interfering with findings of fact of the lower appellate court. This court observed that to say the least the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendment of the B legislature and not frustrate it by excluding the same. This court further observed that the High Court in second appeal cannot substitute its own findings on reappreciation of evidence merely on the ground that another view was possible.

C 27. This court again reminded the High Courts in *Commissioner, Hindu Religious & Charitable Endowments v. P. Shanmugama* [(2005) 9 SCC 232] that the High Court has no jurisdiction in second appeal to interfere with the finding of facts.

D 28. Again, this court in the case of *State of Kerala* v. *Mohd. Kunhi* [(2005) 10 SCC 139] has reiterated the same principle that the High Court is not justified in interfering with the concurrent findings of fact. This court observed that, in doing so, the High Court has gone beyond the scope of Section 100 E of the Code of Civil Procedure.

29. Again, in the case of *Madhavan Nair v. Bhaskar Pillai* [(2005) 10 SCC 553], this court observed that the High Court was not justified in interfering with the concurrent findings of F fact. This court observed that it is well settled that even if the first appellate court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

30. Again, in the case of *Harjeet Singh v. Amrik Singh* G [(2005) 12 SCC 270], this court with anguish has mentioned that the High Court has no jurisdiction to interfere with the findings of fact arrived at by the first appellate court. In this case, the findings of the trial court and the lower appellate court regarding readiness and willingness to perform their part of H contract was set aside by the High Court in its jurisdiction under

Section 100 C.P.C. This court, while setting aside the judgment of the High Court, observed that the High Court was not justified in interfering with the concurrent findings of fact arrived at by the courts below.

31. In the case of *H. P. Pyarejan v. Dasappa* [(2006) 2 SCC 496] delivered on 6.2.2006, this court found serious infirmity in the judgment of the High Court. This court observed that it suffers from the vice of exercise of jurisdiction which did not vest in the High Court. Under Section 100 of the Code (as amended in 1976) the jurisdiction of the court to interfere with the judgments of the courts below is confined to hearing of substantial questions of law. Interference with the finding of fact by the High Court is not warranted if it invokes reappreciation of evidence. This court found that the impugned judgment of the High Court was vulnerable and needed to be set aside.

32. In *Chandrika Singh (Dead) by LRS & Another v. Sarjug Singh & Another* (2006) 12 SCC 49, this court again reiterated legal position that the High Court under section 100 CPC has limited jurisdiction. To deal with cases having a substantial question of law, this court observed as under:

> "12. ... While exercising its jurisdiction under Section 100 of the Code of Civil Procedure, the High Court is required to formulate a substantial question of law in relation to a finding of fact. The High Court exercises a limited jurisdiction in that behalf. Ordinarily unless there exists a sufficient and cogent reason, the findings of fact arrived at by the courts below are binding on the High Court..."

33. In *Chacko & Another v. Mahadevan* (2007) 7 SCC 363, while dealing with the jurisdiction of sections 96 and 100 CPC, this court laid down as under:

> "6. It may be mentioned that in a first appeal filed under Section 96 CPC, the appellate court can go into questions of fact, whereas in a second appeal filed under

A Section 100 CPC the High Court cannot interfere with the findings of fact of the first appellate court, and it is confined only to questions of law."

34. In *Bokka Subba Rao v. Kukkala Balakrishna & Others* B (2008) 3 SCC 99, this court has clearly laid down that without formulating substantial questions of law under section 100 CPC, the High Court cannot interfere with the findings of fact. The court laid down as under:

"4. ... It is now well settled by a catena of decisions of this C Court that the High Court in second appeal, before allowing the same, ought to have formulated the substantial questions of law and thereafter, to decide the same on consideration of such substantial questions of law ... ."

D 35. In *Nune Prasad & Others v. Nune Ramakrishna* (2008) 8 SCC 258, this court laid down that the legislature has conferred a limited jurisdiction under section 100 CPC on the High Court to deal with the cases where substantial question of law is involved.

E 36. In *Basayyal Mathad v. Rudrayya S. Mathad & Others* (2008) 3 SCC 120, this court has held that interference by the High Court without framing substantial question of law is clearly contrary to the mandate of section 100 CPC.

F 37. In *Dharam Singh v. Karnail Singh & Others,* (2008) 9 SCC 759, this court again crystallized the legal position in the following words:

"13. The plea about proviso to Sub-section (5) of Section 100 instead of supporting the stand of the respondent G rather goes against them. The proviso is applicable only when any substantial question of law has already been formulated and it empowers the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law. The expression "on any other

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substantial question of law" clearly shows that there must be some substantial question of law already formulated and then only another substantial question of law which was not formulated earlier can be taken up by the High Court for reasons to be recorded, if it is of the view that the case involves such question." A B

38. In *Narendra Gopal Vidyarthi v. Rajat Vidyarthi,* 2008 (16) SCALE 122, this court laid down that the High Court would be justified to interfere under section 100 CPC only if it involves substantial question of law.

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39. In a recent judgment *U.R. Virupakshaiah v. Sarvamma & Another,* 2009 (1) SCALE 89, this court has once again crystallized the legal position after 1976 Amendment of the CPC. The court observed as under:

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"The Code of Civil Procedure was amended in the year 1976 by reason of Code of Civil Procedure (Amendment) Act, 1976. In terms of the said amendment, it is now essential for the High Court to formulate a substantial question of law. The judgments of the trial court and the First Appellate Court can be interfered with only upon formulation of a substantial question of law..." E

40. It is a matter of common experience in this court that despite clear enunciation of law in a catena of cases of this court, a large number of cases are brought to our notice where F the High Court under section 100 CPC are disturbing the concurrent findings of fact without formulating the substantial question of law. We have cited only some cases and these cases can be easily multiplied further to demonstrate that this court is compelled to interfere in a large number of cases G decided by the High Courts under section 100 CPC. Eventually this court has to set aside these judgments of the High Courts and remit the cases to the respective High Courts for deciding them *de novo* after formulating substantial question of law. Unfortunately, several years are lost in the process. Litigants H

A find it both extremely expensive and time consuming. This is one of the main reasons of delay in the administration of justice in civil matters.

41. In this view of the matter, we are constrained to set-aside the impugned judgment of the High Court and remit the B second appeal to the High Court for deciding it *de novo* on merits after framing the substantial question of law. In order to further avoid delay, we direct the parties to appear before the High Court on 16.3.2009. This case has been pending for quite a long time, therefore, we request the High Court to dispose C of the second appeal as expeditiously as possible.

42. The appeal is accordingly disposed of leaving the parties to bear their own costs.

G.N. Appeal disposed of.