

RAMESHWAR DAYAL MANGALA @ RAMESH CHAND V.

HARISH CHAND & ANR.

Civil Appeal Nos.1694-1695 of 2009

MARCH 18, 2009

(DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ)

Code of civil procedure, 1908:

s. 100 – Second appeal – Decided by High Court without formulating a substantial question of law and without hearing it on such question – Matter remitted to High Court for decision in accordance with law.

The instant appeals were filed challenging the decision of the High Court deciding a second appeal, arising out of a decree for mandatory injunction, without formulating any substantial question of law or hearing the appeal on such question.

Allowing the appeals and remitting the matter to the High Court, the Court

HELD: A perusal of the judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on any such question. That being so, the judgment of the High Court cannot be maintained, and is set aside. The High Court would proceed in the matter in accordance with law and in terms of observations made in the judgment of this Court. [para 5] [508-D-E]

Ishwar Dass Jain v. Sohan Lal 2000 (1) 5CC 434 and *Roop Singh v. Ram Singh* 2000 (3) SCC 708 – relied on.

Kanhaiyalal and Ors. v. Anupkumar and Ors. 2003 (1) SCC 430; *Mathakala Krishnaiah v. V. Rajagopal* 2004 (10)

- A 5CC 676; *Smt. Ram Sakhi Devi v. Chhatra Devi & Ors.* JT 2005 (6) SC 167; *Sasikumar & Ors. v. Kunnath Chellapan Nair & Ors.* 2005 (12) SCC 588; *Gian Dass v. The Gram Panchayat Village Sunner Kalan & Ors.* 2006 (6) 5CC 271; *Shah Mansukhlal Chhaganlal (d) through Lrs. v. Gohil Amarsing Govindbhai (d) through Lrs.* 2006 (13) SCALE 99 – referred to.

Case Law Reference

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|---|--|-------------|--------|
| | 2000 (1) 5CC 434 | relied on | para 6 |
| C | 2000 (3) SCC 708 | relied on | para 7 |
| | 2003 (1) SCC 430 | referred to | para 8 |
| | 2004 (10) 5CC 676 | referred to | para 8 |
| D | JT 2005 (6) SC 167 | referred to | para 8 |
| | 2005 (12) SCC 588 | referred to | para 8 |
| | 2006 (6) 5CC 271 | referred to | para 8 |
| | 2006 (13) SCALE 99 | referred to | para 8 |
| E | CIVILAPPELATE JURISDICTION : Civil Appeal Nos. 1694-1695 of 2009 | | |
| F | From the Judgement and Order dated 25.03.2008/ 28.05.08 of the Hon'ble High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 3067 of 1985 & Cross Objection No. 25-C of 2006 and in Review Petition No. 30-C of 2008 in RSA. No. 3067 of 1985 and Cross Objection No. 25-C of 2006. | | |

Parmanand Gaur, for the Appellant.

- G Manoj Swarup, Akshat Goel, Ajay Kumar, for the Respondents.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

- H 1. Leave granted.

2. These appeals are directed against the judgment of a learned Single Judge of the Punjab and Haryana High Court disposing of an appeal filed under Section 100 of the Code of Civil Procedure, 1908 (in short 'CPC').

3. The respondent as plaintiff has filed a suit for mandatory injunction. The appellant filed written statement refuting the assertions by the plaintiff. Replication was filed by the respondent. The trial court framed 11 issues and learned Subordinate Judge, 1st class, Palwal, decided issue nos. 1, 2 and 10 in favour of the respondent decreeing the suit in mandatory injunction. An appeal was preferred by the appellant which was decided by learned Additional District Judge, Faridabad, and was allowed. Questioning the judgment and decree passed by the First Appellate Court, second appeal was filed which was allowed by the impugned judgment. It is to be noted that cross objection was also filed in terms of Order 41 Rule 22 CPC. Though many points have been urged in support of the appeal, the primary stand is that the second appeal was allowed without formulating any substantial question of law. Learned counsel for the respondent submitted that though question of law was not formulated, after analysing evidence and applicable principles of law the High Court has allowed this appeal.

4. Section 100 of CPC deals with "Second Appeal". The provision reads as follows:

"Section 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.

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

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

C (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 take away or abridge the power of the question of law, not formulated by it, if it is satisfied that the case involves such question."

D 5. A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated. That being so, the judgment cannot be maintained, which is set aside and remitted back to the High Court for proceeding in the matter in accordance with law and in terms of observations made herein.

E 6. In *Ishwar Dass Jain v. Sohan Lal* (2000 (1) 5CC 434), this Court in para 10, has stated thus:

F "10. Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the doing so."

G 7. Yet 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 7 of the said judgment reads:

H "7. It is to be reiterated that under Section 100 CPC 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.” A

8. The position has been reiterated in Kanhaiyalal and Ors. v. Anupkumar and Ors. (2003 (1) SCC 430), Mathakala Krishnaiah v. V. Rajagopal (2004 (10) 5CC 676), Smt. Ram Sakhi Devi v. Chhatra Devi & Ors. (JT 2005 (6) SC 167), Sasikumar & Ors. v. Kunnath Chelapan Nair & Ors. (2005 (12) SCC 588), Gian Dass v. The Gram Panchayat Vilage Sunner Kalan & Ors. (2006 (6) 5CC 271), Shah Mansukhlal Chhaganlal (d) through Lrs. v. Gohil Amarsing Govindbhai (d) through Lrs. (2006 (13) SCALE 99). B C

9. The appeals are allowed and the impugned order is set aside. The matter is remitted to the High Court to rehear the Second Appeal, keeping in view the position in law set out above. There will be no order as to costs. D

R.P.

Appeals allowed.