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BALWINDER SINGH

v.

NATIONAL FERTILIZERS LTD. & ORS.

(Civil Appeal No. 6013 of 2014)

JULY 07, 2014.

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[SUDHANSU JYOTI MUKHOPADHAYA AND
V. GOPALA GOWDA, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

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s.100 - Second appeal - Requirement of framing substantial question of law - High Court admitting the second appeal and allowing the same without framing any substantial question of law - Held: The second appellate court has no jurisdiction to admit or decide the second appeal without formulating a substantial question of law at the initial stage which is a sine qua non for exercising jurisdiction u/s 100 - High Court erred gravely in reversing the judgment and decree passed by the trial court as affirmed by the first appellate court without framing any substantial question of law

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- Impugned judgment is set aside and the judgments and decrees passed by trial court as affirmed by first appellate court are upheld - Service law.

The appellant in C.A. No. 6013 of 2014 filed a suit for declaration against the respondent-employer for declaration that he was entitled to be confirmed as Junior Steno Clerk from the date he completed the probation period and for injunction claiming increments and other allowances. The appellant in C.A. No. 6015 of 2014 filed a suit for declaration that he was entitled to get the salary in the pay scale of Junior Filed Assistant plus usual allowances. The trial court decreed both the suits and the first appellate court affirmed the said decrees. The second appeals filed by the employer were allowed by

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the High Court and the judgments and decrees passed by courts below were set aside. A

In the instant appeals, it was contended for the appellants that the High Court erred in reversing the findings of the courts below without framing any substantial question of law. B

Allowing the appeals, the Court

HELD: 1.1. The respondent, being the appellant before the High Court, did not raise any substantial question of law when the memo of appeal was filed. Subsequently, by filing civil miscellaneous applications in the second appeals, a number of substantial questions of law which include question of facts or mixed question of facts and law were raised. At the time of admission of the second appeal though the High Court observed that substantial question of law were raised at paragraph 13 of the grounds of appeal, it neither formulated any substantial question of law nor did it decide as to which out of the six questions of law raised was the substantial questions of law for admitting the second appeal for its determination. Even in the impugned judgment the High Court has not referred to any substantial question of law for deciding the appeal, obviously, as no substantial question of law was framed at the time of admitting the second appeal, The High Court erred gravely in reversing the judgment and decree passed by the trial court as affirmed by the first appellate court without framing any substantial question of law. [para 19] [842-C-G] C
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2. As the second appellate court has no jurisdiction to admit or decide the second appeal without formulating a substantial question of law at the initial stage which is a sine qua non for exercising jurisdiction u/s 100 CPC., the impugned common judgment is set aside, and judgments and decrees passed by the trial court as H

A affirmed by the first appellate court are upheld. [para 20-21] [842-G-H; 843-B]

Umerkhan vs. Bismillabi alias Babulal Shaikh, 2011 (9) SCR 551 = (2011) 9 SCC 684; and Hardeep Kaur vs. Malkiat Kaur, 2012 (2) SCR 478 = (2012) 4 SCC 344 - relied on.
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Case Law Reference:

2011 (9) SCR 551 relied on para 17

C 2012 (2) SCR 478 relied on para 18

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6013 of 2014

From the Judgment and Order dated 02.08.2011 in RSA No. 3127/2003 of the High Court of Punjab & Haryana at Chandigarah.
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WITH

C.A. No. 6015 of 2014.

E Arvind Minocha for the Appellant.

Pallav Shishodia, Ghanshyam Joshi for the Respondents.

The Judgment of the Court was delivered by

F **SUDHANSU JYOTI MUKHOPADHAYA, J. : 1. Leave granted.**

2. These appeals have been preferred by the plaintiff(s) - appellant(s) against the common judgment and decree dated 2nd August, 2011 passed in RSA No.3127 of 2003 and RSA
G No.5214 of 2003, etc. By the impugned common judgment, the Second Appellate Court set aside the judgment and decree, passed by the Trial Court and affirmed by the First Appellate Court.

H 3. The plaintiffs-appellants were appointed in the services

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of the respondent-National Fertilizers Ltd. The appellant- Balwinder Singh was appointed as Junior Steno Clerk on 3rd April, 1991. The other appellant-Ram Swaroop was appointed as a Field Assistant on 27th April, 1991. The plaintiff-appellant, Balwinder .Singh filed a suit against the defendant-respondent on 16th August, 1999 for declaration that he is entitled to be confirmed as Junior Steno Clerk w.e.f. 8th September, 1991 i.e. the date on which he has successfully completed the probation period of six months and mandatory injunction to the effect that he is entitled to increment, bonus, medical allowance, house rent etc.

4. A separate suit was filed by the plaintiff-appellant, Ram Swaroop, against the defendant-respondent for declaration to the effect that he is entitled to get salary in the pay scale of Junior Field Assistant plus usual allowance, and that the action of the defendant in making the payment of Rs.1800/- per month is illegal, null and void and is liable to be set aside.

5. Learned Civil Judge, Sirsa, Haryana after appreciating the facts and circumstances and evidence on record allowed the suit in favour of the plaintiff-appellant, Balwinder Singh by judgment and decree dated 12th December, 2000 in Suit No.359-C of 1999. An appeal preferred by the defendant-respondent against the said judgment and decree passed by the Civil Judge was dismissed by the Addl. District Judge, Sirsa, Haryana by judgment and decree dated 7th April, 2003 in Civil Appeal No.21/2001.

Similarly, the suit preferred by the appellant-Ram Swaroop was allowed and decreed in his favour by judgment and decree dated 3rd September, 2001 passed in Civil Suit No.1267/ 1997. The appeal against the said judgment and decree preferred by the defendant-respondent was dismissed vide judgment and decree dated 7th August, 2003 passed in Civil Appeal No.94/9.10.2001/29.10.2002.

6. Both the aforesaid judgments and decrees, passed by

A the Trial Court and affirmed by the Appellate Court were challenged by the defendant-respondent before the High Court in RSA No.3127 of 2003 and RSA No.5646 of 2003 respectively. Similar judgment(s) and decree passed in case of other employees were also challenged by filing separate
B RSAs. All the aforesaid RSAs were heard together and by the common judgment dated 2nd August, 2011, the High Court allowed the Second Appeals preferred by the defendant-respondent, setting aside the judgment and decree which were passed in favour of the plaintiffs-appellants. Some directions
C were issued in the connected second appeals.

7. Learned counsel for the appellants have challenged the common judgment only on the ground that the High Court reversed the finding of the subordinate courts without framing any substantial question of law. On the other hand, learned
D counsel for the respondent submitted that the High Court decided the Second Appeals in favour of the defendant-respondent after framing substantial question of law.

8. We have noticed the submissions made on behalf of
E the parties and perused the records.

9. From the impugned judgment, we find that the learned Judge though allowed different appeals has not referred to any substantial question of law, if any that was framed at the time of the admission of the appeals or at the time of hearing.
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10. Learned counsel for the respondent has relied upon the order sheets of the second appeals and has referred to the memo of appeals to suggest that substantial question of law was framed at the time of admission of the second appeals. It is desirable to refer to the order sheets of the respective
G second appeals as noticed and mentioned below.

11. From the record of RSA No.3127 of 2003, it appears that no substantial question of law was mentioned in the memo of appeal. For the said reason counsel for the respondents, who
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were appellants before the High Court on 2nd July, 2010 submitted that the substantial question of law has not been framed which is mandatory requirement of Section 100 of CPC and on 2nd July, 2010 sought time to prepare and submit the substantial question of law. The order reads as follows:

" The counsel for the appellants submits that the substantial questions of law have not been prepared and submitted as per the mendatory requirement of Section 100 CPC. He seeks a date to prepare and submit the substantial questions of law. The prayer is allowed.

In the interest of justice, adjourned to 16.07.2010 for arguments."

12. On 16th July, 2010 to answer certain queries made by the Court and on the request of learned counsel for the appellants the matter was adjourned. The order reads as under:.

"The proposed substantial questions of law, arising out the instant appeal for the determination of this Court, have already been incorporated, in para 13 of the grounds of appeal.

The counsel for the appellants was put certain queries when he started arguing the matter. He seeks a date to go through the record with a view to answer the aforesaid queries properly. The prayer is allowed.

In the interest of justice, adjourned to 23.07.2010 for arguments."

13. The grounds of appeal were filed in the said RSA No.3127 of 2003. At paragraph 13 of the grounds of the appeal filed subsequently in the second appeal, following substantial questions of law were raised and suggested:

A *"That the following substantial questions of law arise for the kind consideration of this Hon'ble Court:-*

(i) *Whether the suit filed by the respondent-plaintiff was barred by limitation?*

B (ii) *Whether the suit filed by the respondent-plaintiff was under-valued for the purpose of Court fees?*

(iii) *Whether the Civil Courts at Sirsa had the jurisdiction to try the suit instituted by the respondent-plaintiff?*

C (iv) *Whether the services of the respondent-plaintiff were liable to regularized in view of the fact that his appointment was illegal?*

D (v) *Whether the services of the respondent - plaintiff was illegal?*

(vi) *Whether the Ld. Courts below misconstrued the appointment letter Ex.P1?*

E 14. The High Court by its order dated 11th July, 2003 admitted the RSA No.3127 of 2003. The said order reads as follows:

"RSA NO. 3127 OF 2003

F *Present: Mr. Ashok Aggarwal, Sr.Advocate, With Mr. Vikram Aggarwal, Advocate for the appellants.*

The substantial questions of law as mentioned in para No.13 of the Memo of appeal arise for consideration of this Court:

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Admitted.

Stay execution of the decree.

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Sd/-

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(Hemant Gupta)

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Judge

11.07.2003."

Similar is the position with regard to other second appeals.

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15. From the aforesaid order sheets and memo of appeals the following fact emerges:

(a) No substantial question of law was raised at the time of filing of the memo of second appeal. They were filed subsequently by filing civil miscellaneous petitions in different RSAs.

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(b) The High Court though noticed the different substantial questions of law mentioned in paragraph 13 of the grounds of appeal admitted the second appeals without framing any substantial question of law."

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16. Sections 100, 101 and 103 of the Code of Civil Procedure, 1908 deal with second appeal and power of High Court to determine issues of fact, they read as follows:

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"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.

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

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

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

B (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:*

C *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."*

D **"Section 101.** *Second appeal on no other grounds.- No second appeal shall lie except on the ground mentioned in Section 100."*

E **"Section 103.** *Power of High Court to determine issues of fact.- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-*

(a) *which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or*

F (b) *which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100."*

G 17. The question as to whether the High Court is bound to formulate the substantial question of law at initial stage itself was considered by this Court in *Umerkhan vs. Bismillabi alias Babulal Shaikh*, (2011) 9 SCC 684. In the said case, this Court held as follows:

H "11. *In our view, the very jurisdiction of the High Court in*

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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.

12. This Court has been bringing to the notice of the High Courts the constraints of Section 100 of the Code and the mandate of the law contained in Section 101 that no second appeal shall lie except on the ground mentioned in Section 100, yet it appears that the fundamental legal position concerning jurisdiction of the High Court in second appeal is ignored and overlooked time and again. The present appeal is unfortunately one of such matters where the High Court interfered with the judgment and decree of the first appellate court in total disregard of the above legal position."

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A 18. Similar was the view of this Court in *Hardeep Kaur vs. Malkiat Kaur*, (2012) 4 SCC 344. This Court held that the High Court is required to formulate substantial question of law involved in the second appeal at the initial stage itself if it is satisfied that the matter deserves to be admitted and the
 B second appeal has to be heard and decided on such substantial question of law.

19. In the present case the respondent, who was the appellant before the High Court has not raised any substantial question of law when the memo of appeal was filed.
 C Subsequently, by filing civil miscellaneous applications in those second appeals, a number of substantial questions of law which include question of facts or mixed question of facts and law were raised as apparent from paragraph 13 of grounds of
 D appeal as quoted above. At the time of admission of the second appeal though the High Court observed that substantial question of law has been raised at paragraph 13 of the memo of appeal, it has neither formulated any substantial question of law nor decided as to which out of the six questions of law raised are the substantial questions of law for admitting the
 E second appeal for its determination. Even in the impugned judgment the learned Judge has not referred to any substantial question of law for deciding the appeal. Obviously, it has not been referred as no substantial question of law was framed at the time of admitting the second appeal, The High Court erred
 F gravely in reversing the judgment and decree passed by the trial court as affirmed by the First Appellate Court without framing any substantial question of law.

G 20. As the Second Appellate Court has no jurisdiction to admit or decide the second appeal without formulating a substantial question of law at the initial stage which is a sine qua non for exercising jurisdiction under Section 100 CPC., we have no other option but to set aside the impugned common judgment.

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21. For the reasons aforesaid, we set aside the impugned common judgment dated 2nd August, 2011 passed by the High Court in RSA Nos.3127 and 5214 of 2003 etc. and uphold the respective judgment and decree passed by the Trial Court as affirmed by the First Appellate Court in the case of the plaintiffs-appellants. These appeals are allowed. No costs.

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Rajendra Prasad

Appeals allowed.