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KANAILAL & ORS.

v.

RAM CHANDRA SINGH & ORS.

(Civil Appeal No.4165 of 2008)

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AUGUST 23, 2017

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Code of Civil Procedure, 1908 – s. 100 and Or. XLI, r.31 – Appeal filed by the appellant against the judgment of trial Court, dismissed by the High Court in limine *– Held: High Court while deciding the appeal neither set out the facts nor the submissions urged by the appellants in support of their appeal and nor gave any reason as to why there was no merit in the submission of appellants and why the appeal did not involve any substantial question of law as required to be made out u/s. 100 – Further, there was non-compliance with the requirements of Or.XLI, in regard to the contents of the judgment of the Appellate Court i.e. (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; (d) where the decree appealed from is reversed or varied, the relief to which appellant is entitled etc. – Since, judgment impugned did not satisfy the requirements of s.100 and /or Or.XLI, r.31 of CPC, it is legally unsustainable.*

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Allowing the appeal, the Court

HELD: 1. Mere perusal of the impugned order would go to show that the High Court while deciding the appeal neither set out the facts nor the submissions urged by the appellants in support of their appeal and nor given any reason as to why the submissions urged by the appellants have no merit and why the appeal does not involve any substantial question of law as is required to be made out under Section 100 of the Code. It has been consistently emphasized the need for assigning reasons in support of its conclusion and while doing so must deal with all the issues raised by the parties to the *lis*. [Paras 9, 10][605-E-F]

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Jayanmti De & Anr. v. Abani Kanta Barat and Ors. **(2011) 6 SCC 455;** *Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs.* **(2001) 3 SCC 179 : [2001]**

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1 SCR 948; *Union of India & Ors. v. Jai Prakash Singh & Ors.* (2007) 10 SCC 712 : [2007] 3 SCR 757 – referred to.

2.1 That apart, Order 41 Rule 31 of the Code which deals with the contents, date and the signature of judgment is also apposite to take note of. [Para 11] [606-E]

2.2 It is clear from mere reading of the Rule 31(a) to (d) that it makes it legally obligatory upon the Appellate Court (both-first and second Appellate Court) as to what should the judgment of the Appellate Court contain. Sub-clause(a) provides that the judgment must formulate and state the points arising in the case for determination. Sub-clause(b) provides that the Court must give decision on such points and sub- clause(c) provides that the judgment shall state the reasons for the decision. So far as sub-clause (d) is concerned, it applies in those cases where the Appellate Court has reversed the decree. In such case, the Court has to specify the relief to which the appellant has become entitled to as a result of the decree having been reversed in appeal at his instance. [Paras 12, 13] [606-H; 607-A-B]

3. While deciding the second appeal which lies only to the High Court, the Court has to further ensure compliance of the requirements of Section 100 of the Code in addition to the requirements of Order 41 Rule 31 of the Code. In other words, the High Court while hearing the second appeal at the time of its admission has to first find out whether the second appeal involves any substantial question(s) of law and if the Court finds that the appeal does involve any substantial question(s) of law then such question(s) is/are required to be formulated. The appeal can be then heard finally only on such formulated question(s). [Paras 14, 15] [607-C-D]

4. If however, the Court, at the time of hearing the appeal on the question of admission, comes to a conclusion that the appeal does not involve any such question within the meaning of Section 100 of the Code, then it has to pass a reasoned order keeping in view the requirements of Order 41 Rule 31. Indeed, this being the mandatory requirements of law, its non-compliance by the Appellate Court render their judgment bad in law. [Para 16] [607-E]

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Case Law Reference

(2011) 6 SCC 455	**referred to**	**Para 9**
[2001] 1 SCR 948	**referred to**	**Para 9**
[2007] 3 SCR 757	**referred to**	**Para 10**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.4165 of 2008.

From the Final Order dated 09.09.1999 passed by the High Court of Calcutta at Kolkata in SAT No.1082 of 1999 re-numbered S.A. No.740/1999.

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Shekhar Kumar, Adv. for the Appellants.

Bijan Kumar Ghosh, Adv. for the Respondents.

The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the defendants against the final judgment and order dated 09.09.1999 passed by the High Court of Calcutta in S.A.T. No.1082 of 1999 (re-numbered as S.A. No.740 of 1999) whereby the appeal filed by the appellants was summarily dismissed under Order 41 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").

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2. Few relevant facts need mention in brief infra.

3.The appellants herein are the defendants whereas the respondents are the plaintiffs in the civil suit out of which this appeal arises.

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4. The respondents filed the civil suit being Title Suit No. 37 of 1991 before the Sub Divisional Court of the Munsif, Jhargram, District Midnapore against the appellants *inter alia* seeking partition in relation to the suit properties. The appellants filed their written statement and denied the plaint averments. Parties went to trial on the issues framed for its determination.

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5. By judgment/decree dated 26.06.1992, the Trial Court dismissed the suit. The respondents, felt aggrieved, filed first appeal being Title Appeal No. 240 of 1992 before the Additional District Judge, 6th Court, Midnapore. By judgment/decree dated 28.01.1999, the first Appellate Court (Additional District Judge, 6th Court) allowed the appeal filed by

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the plaintiffs, set aside the judgment and decree of the Trial Court and decreed the plaintiffs' suit. A

6. The appellants (defendants), felt aggrieved, filed second appeal being S.A.T. No.1082 of 1999 (re-numbered as S.A. No. 740 of 1999) before the High Court. By impugned judgment, the High Court dismissed the appeal in *limine*, which has given rise to filing of this appeal by special leave before this Court by the defendants. B

7. The impugned order reads as under :

> **"This appeal is summarily dismissed under Order 41 Rule 11 of the Code of Civil Procedure.**
>
> **There will be no order as to costs."** C

8. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside of the impugned order, remand the case to the High Court for deciding the second appeal afresh after framing proper substantial questions of law, if found to arise in the case. D

9. Mere perusal of the impugned order quoted supra would go to show that the High Court while deciding the appeal neither set out the facts nor the submissions urged by the appellants in support of their appeal and nor given any reason as to why the submissions urged by the appellants have no merit and why the appeal does not involve any substantial question of law as is required to be made out under Section 100 of the Code. (See- 2011 (6) SCC 455 - **Jayanmti De & Anr. vs. Abani Kanta Barat and Ors.,** (2011) 6 SCC 455 and **Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs.,** (2001) 3 SCC 179). E

10. This Court has consistently emphasized the need for assigning reasons in support of its conclusion and while doing so must deal with all the issues raised by the parties to the *lis*. Indeed, this Court has made the following very pertinent observations on this issue in **Union of India & Ors. Vs. Jai Prakash Singh & Ors.,** (2007) 10 SCC 712 which read as under: F G

> **"Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is**

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amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.' Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."

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11. That apart, Order 41 Rule 31 of the Code which deals with the contents, date and the signature of judgment is also apposite to take note of. It reads as under:

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"31. Contents, date and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state—

(a) the points for determination;

(b) the decision thereon;

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(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring there in."

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12. It is clear from mere reading of the Rule 31(a) to (d) that it makes it legally obligatory upon the Appellate Court (both-first and second Appellate Court) as to what should the judgment of the Appellate Court contain.

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13. Sub-clause(a) provides that the judgment must formulate and state the points arising in the case for determination. Sub-clause(b) provides that the Court must give decision on such points and sub-clause(c) provides that the judgment shall state the reasons for the decision. So far as sub-clause (d) is concerned, it applies in those cases where the Appellate Court has reversed the decree. In such case, the Court has to specify the relief to which the appellant has become entitled to as a result of the decree having been reversed in appeal at his instance.

14. While deciding the second appeal which lies only to the High Court, the Court has to further ensure compliance of the requirements of Section 100 of the Code in addition to the requirements of Order 41 Rule 31 of the Code set out above.

15. In other words, the High Court while hearing the second appeal at the time of its admission has to first find out whether the second appeal involves any substantial question(s) of law and if the Court finds that the appeal does involve any substantial question(s) of law then such question(s) is/are required to be formulated. The appeal can be then heard finally only on such formulated question(s). **(See Santosh Hazari (supra).**

16. If however, the Court, at the time of hearing the appeal on the question of admission, comes to a conclusion that the appeal does not involve any such question within the meaning of Section 100 of the Code, then it has to pass a reasoned order keeping in view the requirements of Order 41 Rule 31 set out above. Indeed, this being the mandatory requirements of law, its non-compliance by the Appellate Court render their judgment bad in law.

17. As mentioned above, since the judgment impugned does not satisfy the requirements of either Section 100 or/and Order 41 Rule 31 of the Code, it is legally unsustainable.

18. In view of foregoing discussion, the appeal succeeds and is, accordingly, allowed. Impugned order is set aside. The case is remanded to the High Court for hearing of the appeal afresh in accordance with law keeping in view the aforementioned observations.

Ankit Gyan Appeal allowed.