SURAT SINGH (DEAD) A

v.

SIRI BHAGWAN & ORS.

(Civil Appeal Nos. 9118-9119 of 2010)

FEBRUARY 19, 2018 B

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

Code of Civil Procedure, 1908 : s. 100 – Second appeal – Substantial question of law – On facts, the High Court allowed the second appeal, after hearing the appellant of second appeal only and not hearing the contesting respondent No.4 who had filed an application u/s. 151 r/w Or. LXI, r. 21 CPC praying for an opportunity of hearing – High Court did not frame any substantial question of law while admitting the appeal as per sub-section(4) of Section 100 though it remained pending for a long time – While proceeding to allow the second appeal, the High Court framed the substantial question of law in the impugned judgment – Sustainability of – Held: Not sustainable – High Court failed to follow the procedure prescribed u/s. 100 while allowing the second appeal and thus, committed a jurisdictional error calling for interference by this Court – High Court while passing a final judgment framed the substantial question of law for the first time and simultaneously answered the said question in appellant's favour – High Court was under a legal obligation to frame the substantial question at the time of admission of the appeal after hearing the appellant or/and his counsel under sub-section (4) of s. 100 – High Court had no jurisdiction to frame the substantial question at the time of writing of its final judgment in the appeal except to the extent permitted under sub-section (5) – Procedure adopted by the High Court, also resulted in causing prejudice to the respondents because the respondents could not object to the framing of substantial question of law. C D E F G

Allowing the appeals, the Court

HELD: 1.1 When respondent No. 4 (appellant) filed an application under Section 151 read with Order LXI Rule 21 of the Code praying for an opportunity of hearing, his application was dismissed by the High Court. The High Court erred in H

deciding the second appeal much less allowing it after hearing the appellant of second appeal only and not hearing the contesting respondent No.4 (appellant) and also erred in dismissing his application filed under Section 151 read with Order LXI Rule 21 CPC for rehearing of the second appeal. [Paras 12-14] [1070-D-F]

1.2 Having regard to the nature of controversy involved in the case and further in the light of the grounds on which the application for rehearing of the appeal was founded, the High Court should have granted one opportunity of hearing to respondent No. 4 for opposing the second appeal and for that purpose should have restored the second appeal for its re-hearing on merits in accordance with law. This Court cannot countenance the manner in which the High Court decided the second appeal on merits. [Paras 15, 16] [1070-G-H]

1.3 The High Court as it seems did not frame any substantial question of law while admitting the appeal as per sub-section(4) of Section 100 though it remained pending for a long time. However, the High Court proceeded to allow the second appeal and while doing so framed the substantial question of law in the concluding para of the impugned judgment. The manner and the procedure adopted by the High Court while allowing the second appeal are against the procedure laid down in Section 100. [Paras 18, 19] [1071-B-E]

1.4 Sub-section (1) of Section 100 states that the second appeal would be entertained by the High Court only if the High Court is "satisfied" that the case involves a "substantial question of law". Sub- section (3) makes it obligatory upon the appellant to precisely state in memo of appeal the "substantial question of law" involved in the appeal. Sub-section (4) provides that where the High Court is satisfied that any substantial question of law is involved in the case, it shall formulate that question. In other words, once the High Court is satisfied after hearing the appellant or his counsel, as the case may be, that the appeal involves a substantial question of law, it has to formulate that question and then direct issuance of notice to the respondent of the memo of appeal along with the question of law framed by the High Court.

Sub-section (5) provides that the appeal shall be heard only on the question formulated by the High Court under sub-section (4). In other words, the jurisdiction of the High Court to decide the second appeal is confined only to the question framed by the High Court under sub-section(4). The respondent, however, at the time of hearing of the appeal is given a right under sub-section (5) to raise an objection that the question framed by the High Court under sub-section (4) does not involve in the appeal. The reason for giving this right to the respondent for raising such objection at the time of hearing is because the High Court frames the question at the admission stage which is prior to issuance of the notice of appeal to the respondent. In other words, the question is framed behind the back of respondent and, therefore, sub-section(5) enables him to raise such objection at the time of hearing that the question framed does not arise in the appeal. The proviso to sub-section (5), however, also recognizes the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High Court under sub-section (4). However, this power can be exercised by the High Court only after assigning the reasons for framing such additional question of law at the time of hearing of the appeal. [Para 21] [1072-C-H]

1.5 On facts, it cannot be understood as to how the High Court while passing a final judgment in its concluding para could frame the substantial question of law for the first time and simultaneously answered the said question in appellant's favour. Obviously, the Judge must have done it by taking recourse to sub-section (4) of Section 100 of the Code. The High Court was under a legal obligation to frame the substantial question at the time of admission of the appeal after hearing the appellant or/and his counsel under sub-section (4) of Section 100 of the Code, but the High Court did it while passing the final judgment in its concluding para. Such novel procedure adopted by the High Court, is wholly contrary to the scheme of Section 100 of the Code and renders the impugned judgment legally unsustainable. [Paras 22-24] [1073-A-C]

1.6 The High Court had no jurisdiction to frame the substantial question at the time of writing of its final judgment in

the appeal except to the extent permitted under sub-section (5). The procedure adopted by the High Court, apart from it being against the scheme of Section 100 of the Code, also resulted in causing prejudice to the respondents because the respondents could not object to the framing of substantial question of law. Since the High Court failed to frame any substantial question of law under sub-section(4) of Section 100 at the time of admission of the appeal, the respondents could not come to know on which question of law, the appeal was admitted for final hearing. It cannot be disputed that sub-section (5) gives the respondents a right to know on which substantial question of law, the appeal was admitted for final hearing. Sub-section (5) enables the respondents to raise an objection at the time of final hearing that the question of law framed at the instance of the appellant does not really arise in the case. [Paras 25-27] [1073-D-G]

1.7 The respondents are only required to reply while opposing the second appeal to the question formulated by the High Court under sub-section (4) and not beyond that. If the question of law is not framed under sub-section (4) at the time of admission or before the final hearing of the appeal, there remains nothing for the respondent to oppose the second appeal at the time of hearing. In this situation, the High Court would have no jurisdiction to decide such second appeal finally for want of any substantial question of law. [Para 28] [1073-H; 1074-A]

1.8 The scheme of Section 100 is that once the High Court is satisfied that the appeal involves a substantial question of law, such question shall have to be framed under sub-section(4) of Section 100. It is the framing of the question which empowers the High Court to finally decide the appeal in accordance with the procedure prescribed under sub-section (5). Both the requirements prescribed in sub-sections (4) and (5) are, therefore, mandatory and have to be followed in the manner prescribed therein. Indeed, the jurisdiction to decide the second appeal finally arises only after the substantial question of law is framed under sub-section (4). There may be a case and indeed there are cases where even after framing a substantial question of law, the same can be answered against the appellant. It is, however, done only

after hearing the respondents under sub-section (5). If, however, the High Court is satisfied after hearing the appellant at the time of admission that the appeal does not involve any substantial question of law, then such appeal is liable to be dismissed *in limine* without any notice to the respondents after recording a finding in the dismissal order that the appeal does not involve any substantial question of law within the meaning of sub-section (4). It is needless to say that for passing such order in *limine*, the High Court is required to assign the reasons in support of its conclusion. It is, however, of no significance, whether the respondent has appeared at the time of final hearing of the appeal or not. The High Court, in any case, has to proceed in accordance with the procedure prescribed under Section 100 while disposing of the appeal, whether in *limine* or at the final hearing stage. [Paras 29-31] [1074-B-F]

1.9 It is a settled principle of rule of interpretation that whenever a statute requires a particular act to be done in a particular manner then such act has to be done in that manner only and in no other manner. The said principle applies to the instant case because, the High Court failed to follow the procedure prescribed under Section 100 while allowing the second appeal and thus committed a jurisdictional error calling for interference by this Court. [Paras 32-33] [1074-G-H; 1075-A]

1.10 The impugned judgment cannot be sustained as it does not conform to the requirements of Section 100 CPC. The impugned judgment is set aside. The case is remanded to the High Court for deciding the second appeal afresh on merits. The case is remanded due to the infirmity noticed in the manner in which the second appeal was decided. [Para 36, 37, 38] [1075-D-F]

Baru Ram v. Parsanni (Smt.) **AIR 1959 SC 93 : [1959] Suppl. SCR 1403;** *Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs*., **(2001) 3 SCC 179 : [2001] 1 SCR 948 – referred to.**

Interpretation of Statutes by **G.P. Singh, IXth Edn. p 347 – referred to.**

A **Case Law Reference**

[1959] Suppl. SCR 1403	**referred to**	**Para 32**
(2001) 3 SCC 179	**referred to**	**Para 34**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9118-
B 9119 of 2010.

From the Judgment and Orders dated 13.12.2006 and 22.01.2007 of the High Court of Punjab and Haryana at Chandigarh.in Civil Regular Second Appeal No. 382 of 1992 and in Civil Misc. No. 448-C of 2007 in Regular Second Appeal No. 382 of 1992 respectively.

C Vibhuti Sushant Gupta, Neeraj Upadhyay, Dr. Kailash Chand, Advs for the Appellant.

Dhruv Mehta, Sr. Adv, O. P. Bhadani, S. S. Pandey, A. K. Suman, Advs for the Respondents.

D The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. These appeals are directed against the final judgment and order dated 13.12.2006 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Regular Second Appeal No.382 of 1992 whereby the High Court allowed the appeal
E filed by respondent No.1 herein, set aside the judgment dated 13.11.1986 of the District Judge, Narnaul in Civil Appeal No.83 of 1984 and reversed the judgment dated 16.05.1984 of the Trial Court in Civil Suit No. 315 of 1981. By order dated 22.01.2007, the High Court also dismissed the application (C.M. No.448-C of 2007 in RSA No.382/1992) filed by the appellant herein for recalling the judgment dated 13.12.2006.

F 2. In order to appreciate the short issue involved in the appeals, few relevant facts need mention *infra*.

3. One Murti Devi (since dead) and her daughter Smt. Bholi Devi filed Civil Suit No.315/81 in the Court of Sub-Judge, IInd Class, Rewari against one Siri Bhagwan (respondent No.1 herein). The suit was for a
G declaration that the decree obtained by Siri Bhagwan against Murti Devi on 11.11.1980 in Civil Suit No. 638/1980 in relation to the land measuring 37 Kanals 14 Marlas situated at Village Alampur, Tahsil Rewari, District Mahendergarh be declared null and void and not binding on the plaintiffs because it was obtained by defendant No.1-Siri Bhagwan by playing
H fraud and misrepresentation on the plaintiff-Murti Devi by taking

advantage of her illiteracy and poverty. The defendant No.1-Siri Bhagwan contested the suit. A

4. The Trial Court, by judgment/decree dated 16.05.1984 in C.S. No.315 of 1981 dismissed the suit. Felt aggrieved, the plaintiff-Murti Devi, filed first appeal (C.A. No.83 of 1984) before the District Judge. By Judgment/decree dated 13.11.1986, the first Appellate Court allowed B the appeal, set aside the judgment/decree of the Trial Court and decreed the plaintiff's suit.

5. Felt aggrieved, defendant No. 1- Siri Bhagwan filed Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") in the High Court of Punjab & C Haryana out of which these appeals arise. During the pendency of the second appeal, the appellant herein-Surat Singh purchased the suit land from Murti Devi vide registered sale deed dated 30.07.1988 for Rs.80,000/-.

6. The appellant-Surat Singh then filed an application under Order D 1 Rule 10 read with Order 22 Rule 10 of the Code praying therein to become a party respondent along with original plaintiff/respondent No.1 in the second appeal as a subsequent purchaser of the suit land from the plaintiff/respondent No.1, pending litigation.

7. By order dated 04.01.1989, Surat Singh's application was E allowed and he was allowed to become a party-respondent in the second appeal. In the meantime, Murti Devi expired. Since one daughter of Murti Devi was already on record as plaintiff No.2 and the other daughter was on record as proforma defendant No. 2, the *Lis* involved in the appeal continued.

F

8. By impugned judgment dated 13.12.2006, the Single Judge of the High Court allowed the second appeal, set aside the judgment/decree of the first Appellate Court and restored that of the Trial Court, which resulted in dismissal of the suit filed by Murti Devi and her daughter. Since the impugned judgment dated 13.12.2006 was passed without hearing the appellant herein(respondent No.4 in the High Court), he filed G an application under Section 151 read with Order 21 Rule 21 of the Code for recalling the judgment dated 13.12.2006. By order dated 22.01.2007, the High Court dismissed the application. Aggrieved by both the judgment/order dated 13.12.2006 and 22.01.2007, the appellant has filed these appeals by way of special leave in this Court.

H

A 9. Therefore, the short question, which arises for consideration in these appeals, is whether the High Court was justified in allowing the second appeal filed by defendant No. 1-Siri Bhagwan (respondent No.1 herein) and thereby was justified in dismissing the plaintiff's suit by restoring the judgment/decree of the Trial Court.

B 10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals, set aside the impugned judgment and remand the case to the High Court for deciding the second appeal afresh on merits in accordance with law.

C 11. The reasons for remanding the case to the High Court are more than one as set out hereinbelow.

12. First, we find that the High Court allowed the second appeal filed by respondent No. 1 herein without hearing respondent No.4 before it, i.e., (appellant herein). In other words, the High Court allowed the D second appeal after hearing the appellant of second appeal only and not respondent No.4 of the second appeal, who was absent at the time of hearing.

13. When respondent No. 4 (appellant herein) filed an application under Section 151 read with Order 41 Rule 21 of the Code praying for E an opportunity of hearing, his application was dismissed by the High Court.

14. In our opinion, the High Court erred in deciding the second appeal much less allowing it without hearing the contesting respondent No.4 (appellant herein) and also erred in dismissing his application filed F under Section 151 read with Order 41 Rule 21 of the Code for rehearing of the second appeal.

15. Having regard to the nature of controversy involved in the case and further in the light of the grounds on which the application for rehearing of the appeal was founded, the High Court should have granted G one opportunity of hearing to respondent No. 4 for opposing the second appeal and for that purpose should have restored the second appeal for its re-hearing on merits in accordance with law.

16. Second and more important, this Court cannot countenance the manner in which the High Court decided the second appeal on merits. H

17. We find that the judgment of the first Appellate Court, which was impugned in the second appeal, was delivered on 13.11.1986 whereas the second appeal was registered in 1992 (S.A. No.382/92) and the impugned judgment was delivered on 13.12.2006.

18. The High Court as it seems did not frame any substantial question of law while admitting the appeal as per sub-section(4) of Section 100 though it remained pending for a long time. However, the High Court proceeded to allow the second appeal and while doing so framed the substantial question of law in the concluding para of the impugned judgment. It reads as under:

> **"The substantial question of law would, therefore, be whether the finding of the learned lower appellate court terming the transfer on the basis of a consent decree as a gift in the absence of any pleadings was perverse or not? The question of law stands answered in the foregoing discussion.**
>
> **In view of this, the appeal is allowed and the judgment of the learned lower appellate court dated 13.11.1986 is set aside."**

19. In our considered opinion, the manner and the procedure adopted by the High Court while allowing the second appeal are against the procedure laid down in Section 100.

20. Section 100 of the Code reads as under:

> **"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.(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.(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 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 formulated by it, if it is satisfied that the case involves such question."

21.Sub-section (1) of Section 100 says that the second appeal would be entertained by the High Court only if the High Court is "satisfied" that the case involves a "substantial question of law". Sub- section (3) makes it obligatory upon the appellant to precisely state in memo of appeal the "substantial question of law" involved in the appeal. Sub-section (4) provides that where the High Court is satisfied that any substantial question of law is involved in the case, it shall formulate that question. In other words, once the High Court is satisfied after hearing the appellant or his counsel, as the case may be, that the appeal involves a substantial question of law, it has to formulate that question and then direct issuance of notice to the respondent of the memo of appeal along with the question of law framed by the High Court. Sub-section (5) provides that the appeal shall be heard only on the question formulated by the High Court under sub-section (4). In other words, the jurisdiction of the High Court to decide the second appeal is confined only to the question framed by the High Court under sub-section(4). The respondent, however, at the time of hearing of the appeal is given a right under sub-section (5) to raise an objection that the question framed by the High Court under sub-section (4) does not involve in the appeal. The reason for giving this right to the respondent for raising such objection at the time of hearing is because the High Court frames the question at the admission stage which is prior to issuance of the notice of appeal to the respondent. In other words, the question is framed behind the back of respondent and, therefore, sub-section(5) enables him to raise such objection at the time of hearing that the question framed does not arise in the appeal. The proviso to sub-section (5), however, also recognizes the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High Court under sub-section (4). However, this power can be exercised by the High Court only after assigning the reasons for framing such additional question of law at the time of hearing of the appeal.

22. Adverting to the facts of this case at hand, we are at a loss to understand as to how the High Court while passing a final judgment in its concluding para could frame the substantial question of law for the first time and simultaneously answered the said question in appellant's favour. Obviously, the learned Judge must have done it by taking recourse to sub-section (4) of Section 100 of the Code.

23. Here is the case where the High Court was under a legal obligation to frame the substantial question at the time of admission of the appeal after hearing the appellant or/and his counsel under sub-section (4) of Section 100 of the Code, but the High Court did it while passing the final judgment in its concluding para.

24. Such novel procedure adopted by the High Court, in our considered opinion, is wholly contrary to the scheme of Section 100 of the Code and renders the impugned judgment legally unsustainable.

25. In our considered opinion, the High Court had no jurisdiction to frame the substantial question at the time of writing of its final judgment in the appeal except to the extent permitted under sub-section (5). The procedure adopted by the High Court, apart from it being against the scheme of Section 100 of the Code, also resulted in causing prejudice to the respondents because the respondents could not object to the framing of substantial question of law. Indeed, the respondents could not come to know on which question of law, the appeal was admitted for final hearing.

26. In other words, since the High Court failed to frame any substantial question of law under sub-section(4) of Section 100 at the time of admission of the appeal, the respondents could not come to know on which question of law, the appeal was admitted for hearing.

27. It cannot be disputed that sub-section (5) gives the respondents a right to know on which substantial question of law, the appeal was admitted for final hearing. Sub-section (5) enables the respondents to raise an objection at the time of final hearing that the question of law framed at the instance of the appellant does not really arise in the case.

28. Yet, the other reason is that the respondents are only required to reply while opposing the second appeal to the question formulated by the High Court under sub-section (4) and not beyond that. If the question of law is not framed under sub-section (4) at the time of admission or

A before the final hearing of the appeal, there remains nothing for the respondent to oppose the second appeal at the time of hearing. In this situation, the High Court will have no jurisdiction to decide such second appeal finally for want of any substantial question(s) of law.

29. The scheme of Section 100 is that once the High Court is B satisfied that the appeal involves a substantial question of law, such question shall have to be framed under sub-section(4) of Section 100. It is the framing of the question which empowers the High Court to **finally decide** the appeal in accordance with the procedure prescribed under sub-section (5). Both the requirements prescribed in sub-sections (4) and (5) are, therefore, mandatory and have to be followed in the manner C prescribed therein. Indeed, as mentioned *supra,* the jurisdiction to decide the second appeal **finally** arises only after the substantial question of law is framed under sub-section (4). There may be a case and indeed there are cases where even after framing a substantial question of law, the same can be answered against the appellant. It is, however, done D only after hearing the respondents under sub-section (5).

30. If, however, the High Court is satisfied after hearing the appellant at the time of admission that the appeal does not involve any substantial question of law, then such appeal is liable to be dismissed *in limine* without any notice to the respondents after recording a finding in E the dismissal order that the appeal does not involve any substantial question of law within the meaning of sub-section (4). It is needless to say that for passing such order in *limine*, the High Court is required to assign the reasons in support of its conclusion.

31. It is, however, of no significance, whether the respondent has F appeared at the time of final hearing of the appeal or not. The High Court, in any case, has to proceed in accordance with the procedure prescribed under Section 100 while disposing of the appeal, whether in *limine* or at the final hearing stage.

32. It is a settled principle of rule of interpretation that whenever G a statute requires a particular act to be done in a particular manner then such act has to be done in that manner only and in no other manner. (**See- Interpretation of Statutes by G.P. Singh, IXth Edition page 347** and **Baru Ram vs. Parsanni (Smt.)**, AIR 1959 SC 93).

33. The aforesaid principle applies to the case at hand because, H as discussed above, the High Court failed to follow the procedure

prescribed under Section 100 of the Code while allowing the second appeal and thus committed a jurisdictional error calling for interference by this Court in the impugned judgment.

34. While construing Section 100, this Court in the case of **Santosh Hazari** vs. **Purushottam Tiwari (Deceased) by L.Rs.,** (2001) 3 SCC 179 succinctly explained the scope, the jurisdiction and what constitutes a substantial questions of law under Section 100 of the Code.

35. It is, therefore, the duty of the High Court to always keep in mind the law laid down in **Santosh Hazari** (supra) while formulating the question and deciding the second appeal.

36. In the light of the foregoing discussion, we cannot sustain the impugned judgment which, in our view, does not conform to the requirements of Section 100 of the Code and hence calls for interference in this appeal.

37. The appeals thus deserve to be allowed. They are accordingly allowed. The impugned judgment is set aside. The case is remanded to the High Court for deciding the second appeal afresh on merits. The High Court will now frame proper substantial question(s) of law after hearing the appellant and if it finds that any substantial question(s) of law arises in the case, it will formulate such question(s) and accordingly hear the appeal on the question(s) framed finally in accordance with law.

38. We, however, make it clear that we have not applied our mind to the merits of the controversy involved in the appeals, but only formed an opinion to remand the case due to the infirmity noticed in the manner in which the second appeal was decided. The High Court will, therefore, decide the second appeal uninfluenced by any of our observations made in this order.

39. Since the matter is quite old, we request the High Court to decide the second appeal expeditiously preferable within six months from the date of receipt of this judgment.

Nidhi Jain Appeals allowed.