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2023INSC846

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6070 OF 2023
[Arising out of SLP(C)No.20183 of 2022]

SURESH LATARUJI RAMTEKE ...APPELLANT(S)

Versus

SAU. SUMANBAI PANDURANG PETKAR & ORS. ...RESPONDENTS

J U D G M E N T

SANJAY KAROL J.,

1. Leave granted.

2. The following questions arise for consideration of this Court:

2.1 Whether in the absence of affording adequate opportunity of hearing to the parties on addressing the framed substantial questions of law, the High Court could have proceeded to decide the same in an appeal preferred under section 100 Code of Civil Procedure (hereinafter "CPC"), particularly, when the findings of

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fact rendered by two Courts, were sought to be reversed?

2.2 Whether in the absence of any trial record or without summoning and perusing the trial record, findings of fact on the issue of plaintiff's readiness and willingness to execute the sale deed, could have been reversed by the High Court in exercise of its appellate jurisdiction under section 100 CPC?

3. Though, initially in the defendants' appeal, which was listed firstly on 26th April 2022, the High Court fixed the matter for preliminary hearing on 29th September 2022, but adjourned it for the next day, i.e., 30th September, 2022 when, after framing the substantial questions of law, proceeded to hear the appeal and reversed the findings of fact concurrently recorded by the two Courts in the plaintiff's favour.

4. Hence, this appeal by special leave, seeks to assail a judgement and order dated 30th September 2022 passed in Second Appeal No.324/2021 by the High Court of Judicature at Bombay (Nagpur Bench)[1] whereby concurrent findings returned by the Courts below vide judgement dated 3rd September, 2014[2] by the Civil Judge Senior Division, Gadchiroli and vide

1 For Brevity, "Impugned Judgement"
2 Hereafter Referred to as "The Trial Court"

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judgement dated 1st October, 2021[3] by the Principal District Judge, Gadchiroli, were overturned.

THE FACTUAL MATRIX

5. The respondent namely, Sumanbai Pandurang Petkar (defendant in the original suit)[4] had agreed to sell, for a consideration of ₹6,60,000/- the property subject matter of dispute, i.e., 3 acres of land to the appellant herein (plaintiff in the original suit)[5].

6. For transfer, the Divisional Commissioner, Nagpur Division, Nagpur, accorded necessary permissions. Despite various attempts at execution, the same did not take place, and as such the plaintiff issued notices to that effect, which were served on the respondents requiring them to be present at the office of the concerned authority on 16th December, 2009 at 11:30 AM to get the deed executed. Such notices remained not complied with as the defendants allegedly, tried to evade coming to the office of the authority for such purpose.

7. It is as such that the case, subject matter of the present *lis* came to be filed by the Plaintiff.

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3 Hereinafter, "First Appellate Court"
4 Hereafter referred to as "the Defendants"
5 Hereafter, "the Plaintiff"

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TRIAL COURT AND FIRST APPELLATE COURT

8. The Trial Court framed 5 issues. A tabular representation of the issues, the corresponding findings and the reasons therefor, in short, is as below: -

S. No.	Issues	Findings	Reasons
1.	Does plaintiff prove that defendant no. 1 has entered into an agreement of sale suit land Survey No. 236/2 area 1.19 HR of Navegaon in favor of plaintiff for consideration of Rs.6,60,00/-?	YES	PW-1 Suresh and PW-2 Sudhakar have deposed that an agreement was entered into in respect of the land and their testimonies remain unshaken. Even though Ulhas Shriniwas Athaale (PW-3) has not positively identified the thumb impression as that being the same one affixed by defendant no. 1, namely Sumanbai that does not establish that she had not affixed her thumb impressions.
2.	Does plaintiff prove that that on 29.03.2004 defendant no. 1has executed the agreement to sell in favour of the plaintiff and the earnest money of Rs.60,000/- was paid by the plaintiff to the defendant on the same day?	YES	It is clear that, as per the answer to issue one, the agreement was entered into, and it stating that Rs.60,000/- stands received by the defendant. Conclusively, said amount was paid.
2A	Whether the plaintiff proves that he paid Rs.1,00,000 on 17.01.2005, another Rs.1,00,000/- on	NO	No document is placed on record to show wherefrom the said amounts were withdrawn, nor was the same paid in the presence of any

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	07.05.2005, Rs.2,000/- on 12.06.2008 and Rs.8,000/- on 12.06.2008 to defendant no. 1 through her husband defendant no. 2? If yes, what is the legal effect of this payment on the rights of the parties?		one of the witnesses. The amount paid on 07.05.2005 was apparently paid by cheque but the cheque number is absent from the receipt. No passbook or statement is placed on record to show the payment of such amount. The handwriting in which the endorsement on the last page of the agreement was made in respect of receipt of such amount is unclear.
3.	Does the plaintiff prove that he is ready and willing to perform his part of the contract?	YES	Suresh's (PW 1) testimony that after receiving requisite permission from the authority the plaintiff had asked the defendant to execute the deed by way of serving notice and also the fact that he has placed on record cheque for Rs.3,90,000/-, leads to the conclusion that he has always been ready and willing to perform his part of the contract.
4.	Is the plaintiff entitled for specific relief as sought for?	YES	Consequent to the findings in the affirmative in question Nos.1, 2 and 3, the question No.4 is also in the affirmative.
5.	What order and decree?	Suit is partly decreed with proportionate costs.	-----

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9. The Plaintiff was, in view of the above, directed to deposit ₹ 6 lakh with the Court within 15 days and upon such deposit, the defendant was to necessarily execute the sale deed to be entitled to withdraw the said amount.

10. The First Appellate Court in addition to the questions framed by the Trial Court, further added two issues, i.e., (a) Whether the suit is within limitation?; and (b) Whether the impugned judgement required interference? While not disturbing the findings arrived at by the Trial court, resultantly answering the second issue in the negative, also held the suit filed to be within the period of limitation. The appeal was, therefore, dismissed.

IMPUGNED JUDGMENT

11. In the Second Appeal, the Court framed four questions, substantial in nature, and held that the concurrent findings as returned by the trial courts were based on "complete misapplication of law" and "erroneous consideration" and appreciation of the evidence led by the parties. Reliance was placed on **Ravi Setia v. Madan Lal**[6] to state that in cases of perverse findings/complete misappropriation/erroneous

6 (2019) 9 SCC 381 Two Judge Bench

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consideration of the evidence, or failure to consider relevant evidence, a Court in Second Appeal could re-appreciate the evidence. In view of the above, the judgement rendered by both the Courts below was set aside and the plaintiff's suit for specific performance dismissed.

12. It has been urged before us, amongst other grounds, that the judgement of the High Court is contrary to the law settled by various judgments of this court as the substantial questions were framed on the second date of hearing thereby contravening the provisions of Section 100 CPC; the High Court ought not to ordinarily reverse findings of fact, more so concurrent, returned by the trial court until and unless findings returned are perverse, which clearly was not the case; on the aspect of readiness and willingness, reliance was placed on **Sukhbir Singh v. Brij Pal Singh**[7] to submit that compliance with those two factors of specific relief does not entail the carrying of hard cash and instead it is the presence of the financial capacity to do so. A cheque for ₹ 3,90,000/-[8] has been placed on record which was for the meeting which was slated to take place in the office of the Sub-Registrar but in fact it was the Respondents who did not

7 (1997) 2 SCC 200 Two Judge Bench
8 Exhibit 73, as recorded by the Trial Court in issue No.3 of its judgment.

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attend; The High Court erred severely in overturning the findings of fact, particularly in the absence of the record of the trial court.

OPINION OF THE COURT

13. The jurisprudence on Section 100, CPC is rich and varied. Time and again this Court in numerous judgments has laid down, distilled and further clarified the requirements that must necessarily be met in order for a Second Appeal as laid down therein, to be maintainable, and thereafter be adjudicated upon. Considering the fact that numerous cases are filed before this Court which hinge on the application of this provision, we find it necessary to reiterate the principles.

13.1 The requirement, most fundamental under this section is the presence and framing of a "substantial question of law". In other words, the existence of such a question is *sine qua non* for exercise of this jurisdiction.[9]

13.2 The jurisdiction under this section has been described by this Court in **Gurdev Kaur v. Kaki**[10] (Two-Judge Bench) stating that post 1976 amendment, the scope of Section 100 CPC stands drastically curtailed and narrowed down to be

9 Panchugopal Barua v. Umesh Chandra Goswami and Ors. (1997) 4 SCC 713 Two Judge Bench
10 (2007) 1 SCC 546 Two Judge Bench

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restrictive in nature. The High Court's jurisdiction of interfering under Section 100 CPC is only in a case where substantial questions of law are involved, also clearly formulated/set out in the memorandum of appeal. It has been observed that:

> "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 appeal;
>
> (iv) Another part of the section is that the appeal shall be heard only on that question."

Gurdev Kaur (supra) was referred to and relied upon in **Randhir Kaur v. Prithvi Pal Singh & Ors.**[11]

11 (2019) 17 SCC 71; Two Judge Bench

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13.3 In **Santosh Hazari v. Purushottam Tiwari**[12] a Bench of three Judges, held as under in regard to what constitutes a substantial question of law:-

a) Not previously settled by law of land or a binding precedent.

b) Material bearing on the decision of case; and (c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. Therefore, it will depend on facts of each case.

Such principles stand followed in **Government of Kerala v. Joseph**[13] **and Chandrabhan v. Saraswati**[14].

13.4 Non-formulation of substantial question(s) of law renders proceedings "patently illegal". This Court's decisions in **Umerkhan v. Bimillabi**[15] and **Shiv Cotex v. Tirgun Auto Plast Pvt Ltd. & Ors.**[16] indicate this position.

14. Substantial questions of law, as framed by the High Court must be answered in light of the contentions raised therein.

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12 (2001) 3 SCC 179 Three Judge Bench
13 2023 SCC OnLine SC 961 Two Judge Bench
14 2022 SCC OnLine SC 1273 Two Judge Bench
15 (2011) 9 SCC 684 Two Judge Bench
16 (2011) 9 SCC 678 Two Judge Bench

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14.1 If the Court is of the view that a question framed is to be altered, deleted or a new question is to be added, then the Court must hear the parties.

14.2 For both the above principles, reference may be made to **Gajaraba Bhikhubha Vadher v. Sumara Umar Amad**[17] where the following principles were observed: -

a) The substantial question of law framed by the High Court must be answered, with reasons. Disposing off the appeal without answering the same cannot be justified.

b) If a need is felt to modify, alter or delete a question, a hearing must be provided to the parties in respect thereof.

14.3 When the case is admitted, but upon hearing when it is found that no substantial question of law arises for consideration, reasons should be recorded in such dismissal.

15. In **Kichha Sugar Co. Ltd. v. Roofrite (P) Ltd**[18] it was observed:

17 (2020) 11 SCC 114 (Three Judge Bench)
18 (2009) 16 SCC 280 Three Judge Bench

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> "4. Our attention is drawn by the learned counsel for the respondents to the provisions of Section 100(5) of the Civil Procedure Code where the respondent to a second appeal is permitted "to argue that the case does not involve such question" i.e. the questions formulated earlier. No doubt, but then the order on the second appeal should indicate, howsoever briefly, why the questions formulated at the earlier stage had, at the stage of final hearing, been found to be no questions of law."

16. Substantial questions should ordinarily, not be framed at a later stage. If done so, then parties must be given an opportunity to meet them. This Court in **U.R. Virupakshappa v. Sarvamangala**[19] held :

> "**15.** ... It, furthermore, should not ordinarily frame a substantial question of law at a subsequent stage without assigning any reason therefor and without giving a reasonable opportunity of hearing to the respondents. [See *Nune Prasad* v. *Nune Ramakrishna* [(2008) 8 SCC 258 : (2008) 10 Scale 523] ; *Panchugopal Barua* v. *Umesh Chandra Goswami* [(1997) 4 SCC 713] (SCC paras 8 and 9); and *Kshitish Chandra Purkait* v. *Santosh Kumar Purkait* [(1997) 5 SCC 438] (SCC paras 10 and 12)].
>
> **16.** The High Court, in this case, however, formulated a substantial question of law while dictating the judgment in open court. Before such a substantial question of law could be formulated, the parties should have been put to notice. They should have been given an opportunity to meet the same. Although the Court has the requisite jurisdiction to formulate a substantial question of law at a subsequent stage which was not formulated at the time of admission of the second appeal but the requirements laid down in the proviso appended to Section 100 of the Code of Civil Procedure were required to be met."

19 (2009) 2 SCC 177 Two Judge Bench

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16.1 This Court in **Mehboob-Ur-Rehman v. Ahsanul Ghani**[20], observed in respect of application of Section 100(5) CPC as under**: -**

a) It is not rule under proviso to sub-section (5) to hear any other substantial question of law irrespective of the question(s) formulated, so as to annul other requirements of S. 100, CPC.

b) Proviso to come in operation in exceptional cases where reasons are to be recorded by High Court.

16.2 It has further been held that the application of this section is only when some questions, substantial in law, already stand framed. **(B.C. Shivashankara v. B.R. Nagaraj**[21]**)**.

16.3 Wrong application of law laid down by the Privy Council, Federal Court or the Supreme Court, will not qualify for substantial question of law and neither wrong application of facts.

16.4 If on an issue, the trial court discusses the evidence but does not return a finding thereon, High

20 (2019) 19 SCC 415 Two Judge Bench
21 (2007) 15 SCC 387 Two Judge Bench

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Court in jurisdiction under Section 100, CPC may do so. Reference be made to **Govindbhai Chhotabhai Patel v. Patel Ramanbhai Mathurbhai.**[22]

This Court in **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar**[23], observed-

> "**6.** If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law…"

16.5 Interference on findings of fact permitted in exceptional cases, i.e., when finding is based on either inadmissible or, no evidence. This Court in **Dinesh Kumar v. Yusuf Ali**[24] referring to various other cases held:-

a) It is not permissible for High Court to reappreciate evidence as if it was the first appellate court unless findings were perverse.

22 (2020) 16 SCC 255 Two Judge Bench
23 (1999) 3 SCC 722 Two Judge Bench
24 (2010) 12 SCC 740 Two Judge Bench

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b) Finding of fact can be interfered in exceptional circumstances as rarity, rather than a regularity.

c) Scrutiny of evidence in second appeal is not prohibited but has to be exercised upon proper circumspection.

17. Jurisdiction under second appeal not to be exercised merely because an alternate view is possible. It was observed in **Hamida v. Mohd. Khalil**[25]

> 7. …The High Court, it is well settled, while exercising jurisdiction under Section 100 CPC, cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view was possible."

This position was reiterated by **Avtar Singh & Ors. v. Bimla Devi & Ors.**[26]

17.1 In aid of such a restricted application, an essential aspect in ensuring that it does not acquire the nature of a "third appeal" is the limited possibility of appreciation of evidence and connectedly, the restriction on upturning concurrent findings of fact. However, there are certain exceptions to the rule as pointed out by this Court in **Nazir Mohamed v. J. Kamala**[27], as under:

25 (2001) 5 SCC 30 Two Judge Bench
26 (2021) 13 SCC 816 Two Judge Bench
27 (2020) 19 SCC 57 Two Judge Bench

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> "33.4. The general rule is, that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where: (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

17.2 The extent of the same may be underscored by the observation that:

> "**32.** In a second appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in *V. Ramachandra Ayyar* v. *Ramalingam Chettiar* [*V. Ramachandra Ayyar* v. *Ramalingam Chettiar*, AIR 1963 SC 302] . An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter."
>
> (Emphasis Supplied)

18. It is apparent from the above extracted principles and a perusal of the respective judgments that the second appeal is envisioned, much like any other process of the Court to be a step-by-step process, each step further being a consequence of the previous one. Framing of substantial questions at the stage of admission, the appeal then being admitted for hearing, hearing thereon, and then a reasoned judgment.

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19. However, as a reading of the impugned judgment reveals, these steps came to be followed, only partially, more so, ignoring the time element, inherent therein.

20. As **Sumara Umar Ahmad** (supra), **Kichha Sugar** (supra) and **Virupakshappa** (supra) and also the ingredients identified by **Gurdev Kaur** (supra) show, hearing the parties, on all questions, framed at the time of admission as also the one framed, added or altered, is absolutely essential.

21. In the present case, the parties were not given the requisite time to meet the questions framed by the Court. Section 100(5) CPC suggests that there is a gap between framing of the questions at admission and hearing, as the proviso thereto gives an opportunity to the Court to frame additional questions at the time of hearing, on which the parties would have to be heard as well. Meaning thereby, that the questions framed at the time of admission, at such point of subsequent framing of questions are already known to the parties and they have had time to prepare to address arguments on the same. It is during the arguments that a further important issue is discovered and a question in that regard is framed, with the parties then being granted time to meet that question as well.

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22. Our view finds support in **Amar Singh v. Dalip Singh**[28] wherein this Court held: -

a) The purpose of framing of substantial question of law is to give the parties an opportunity to come prepared on that particular question.

b) When a substantial question of law is formulated by the Court then the same must be made known to parties and thereafter they have to be given an opportunity to advance arguments thereon.

c) If any additional questions were framed at the time of hearing, the Court must hear the parties on that question as well.

23. Here, the questions of law, were framed on the second date of hearing, the parties were heard right then and there, and the second appeal was disposed of with the judgment being dictated and findings of fact reversed. That, as the above discussion points out, is not in consonance with the manner set out for the disposal of a second appeal.

24. The impugned judgment overturns concurrent findings of fact in respect of readiness and willingness on the part of the

28 (2012) 13 SCC 405 Two Judge Bench

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plaintiff to perform the contract, without pointing out the exceptional circumstance or the perversity in the findings which were returned by the Courts below.

25. For the Court to have done so, in accordance with law, the actual evidence, which was before the Courts below, in our view, had to be called for. This is so because, if the findings returned are to be upturned on perversity, the same should unmistakably be reflected from record. If this is not so done, the Court of first appeal being the "final Court of fact", would be reduced to a mere saying, of no actual effect. After all, a second appeal is not a "third trial on facts", and so, for reappreciation of evidence to be justified, and for the same to be required - as well as being demonstrably, at a different threshold from merely, a "possible different view", perversity or the other conditions of "no evidence" or "inadmissible evidence" ought to be urged, and subsequently, with the Court being satisfied on the arguments advanced, of such a possibility, the Court would then, proceed to call for the record. That is to say that accepting the argument of perversity merely on the submissions made and not having appreciated the record, would be unfair to the Court of first appeal.

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26. The haste with which the Court proceeded to dispose of the appeal without proper and adequate opportunity to address arguments cannot be appreciated. The governing statute lays considerable emphasis on hearing the parties on all questions- and the same is reflected in various pronouncements of this Court. The approach adopted by a Court in disposing of such appeals must abide by the same.

27. The questions of law raised in the instant appeal are answered as under :

27.1 A Court sitting in second appellate jurisdiction is to frame substantial question of law at the time of admission, save and except in exceptional circumstances. Post such framing of questions the Court shall proceed to hear the parties on such questions, i.e., after giving them adequate time to meet and address them. It is only after such hearing subsequent to the framing that a second appeal shall come to be decided.

27.2 In ordinary course, the High Court in such jurisdiction does not interfere with finding of fact, however, if it does find any compelling reason to do so as regard in law,

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it can do but only after perusing the records of the Trial Court, on analysis of which the conclusion arrived at by such a Court is sought to be upturned. In other words, when overturning findings of fact, the Court will be required to call for the records of the Trial Court or if placed on record, peruse the same and only then question the veracity of the conclusions drawn by the Court below.

28. In view of the foregoing discussion we find it fit to remand the matter to the High Court for consideration afresh in accordance with law. Judgment and Order dated 30th September 2022 passed in Second Appeal No.324/2021 by the High Court of Judicature at Bombay (Nagpur Bench) is set aside and the case is restored to the file of the High Court. Accordingly, the appeal is accepted and allowed in such terms.

29. Pending application(s), if any, shall stand disposed of.

30. No costs.

……………………J.
(B.R GAVAI)

……………………J.
(SANJAY KAROL)

Date : 21st September, 2023;

Place: New Delhi.