



\$~62

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 55/2019 & CM APPL. 11373/2019**
SHANGAR SINGH (NOW DECEASED) THR LRS..... Appellant
Through: Mr. J.C. Mahindro, Adv.

versus

GEETANJALI KAME Respondent
Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **11.03.2019**
CM APPL. 11373/2019 (Exemption)

Exemption allowed, subject to just exceptions.

RSA 55/2019

On a consideration of the submissions made on behalf of the appellant, the substantial question of law formulated is to the effect:

“(i) Whether a Tenant can allege Oral payment when even the Legal Notice issued to the Tenant is not replied by her and

(ii) whether there has been a misappreciation of the evidence by the learned trial Court and the First Appellate Court.”

The above issues have been framed in view of the verdict of this Court in ***M/s Capital Land Builders (PVT) LTD Vs. Tirath Singh (Deceased) & Ors Now Represented by LR's in RSA 86/2017*** wherein in view of the verdict of the Hon'ble Supreme Court in **“Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board &**

RSA 55/2019

page no.1 of 5



Ors.” in 2010(11) Scale 69 with specific observations in paragraphs 8, 22, 23, 24 & 25 which read to the effect:-

“8. These provisions provide for the conditions precedent for entertaining a Second Appeal and the specific manner of its disposal. Section 100 CPC reads as follows:

"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)

(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.

....." Section 103 CPC reads as under:

"103. Power of High Court to determine issue 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



(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."

22. Before powers under Section 103 C.P.C. can be exercised by the High Court in a second appeal, the following conditions must be fulfilled:

(i) Determination of an issue must be necessary for the disposal of appeal;

(ii) The evidence on record must be sufficient to decide such issue; and

(iii) (a) Such issue should not have been determined either by the trial court, or by the appellate court or by both; or

(b) such issue should have been wrongly determined either by trial court, or by the appellate court, or by both by reason of a decision on substantial question of law.

If the above conditions are not fulfilled, the High Court cannot exercise its powers under Section 103 CPC.

Thus, it is evident that Section 103 C.P.C. is not an exception to Section 100 C.P.C. nor is it meant to supplant it, rather it is to serve the same purpose. Even while pressing Section 103 C.P.C. in service, the High Court has to record a finding that it had to exercise such power, because it found that finding(s) of fact recorded by the court(s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below.

23. There is no prohibition on entertaining a second appeal even on a question of fact provided the Court is satisfied that the findings of fact recorded by the



courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide: [Jagdish Singh v. Natthu Singh](#), AIR 1992 SC 1604; [Karnataka Board of Wakf v. Anjuman- E-Ismail Madris-Un-Niswan](#), AIR 1999 SC 3067; and [Dinesh Kumar v. Yusuf Ali](#), AIR 2010 SC 2679).

24. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eyes of law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide: [Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.](#), AIR 2010 SC 2685)

25. In view of above, the law on the issue can be summarised to the effect that a second appeal lies only on a substantial question of law and it is necessary to formulate a substantial question of law before the second appeal is decided.

The issue of perversity itself is a substantial question



of law and, therefore, Section 103 C.P.C. can be held to be supplementary to Section 100 C.P.C., and does not supplant it altogether. Reading it otherwise, would render the provisions of Section 100 C.P.C. redundant. It is only an issue that involves a substantial question of law, that can be adjudicated upon by the High Court itself instead of remanding the case to the court below, provided there is sufficient evidence on record to adjudicate upon the said issue and other conditions mentioned therein stand fulfilled. Thus, the object of the Section is to avoid remand and adjudicate the issue if the finding(s) of fact recorded by the court(s) below are found to be perverse. The court is under an obligation to give notice to all the parties concerned for adjudication of the said issue and decide the same after giving them full opportunity of hearing.”

and in view of the provisions of Section 103 of the CPC, 1908 (as amended) and as observed by the Hon’ble Apex Court in “**Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board & Ors.**” (supra), that the said provision of law serves the same purpose of Section 100 of the CPC, 1908 (as amended), the notice of the substantial questions of law formulated hereinabove and of the appeal be issued to the respondent on taking of steps by the petitioner, process returnable on 11.07.2019.

The ACR and TCR be requisitioned.

ANU MALHOTRA, J

MARCH 11, 2019

vm

RSA 55/2019

page no.5 of 5