

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 92 OF 2013**

SANYOG GANESH NARVEKAR	 Appellant
<i>Versus</i>	
ANJALI SANYOG NARVEKAR	Respondent

Mr Sudin Usgaonkar, Senior Advocate with Ms Pooja Naik, Ms Divya Parab and Ms T. Mashelkar, Advocates for the Appellant.

Mr Nigel Da Costa Frias and Ms Laxmi Sawant, Advocates for the Respondent.

CORAM: M. S. SONAK, J.

DATE : 22nd MARCH 2024

P.C.:

1. Heard Mr Usgaonkar, learned Senior Advocate, who appears with Ms T. Mashelkar for the Appellant and Mr Nigel Da Costa Frias, who appears with Ms L. Sawant for the Respondent.

2. Mr Usgaonkar proposes the following additional substantial questions of law.

(c) Whether the factual findings by the Learned First Appellate Court on the deposition of PW2 Chirag Narvekar, who was found to be a fair and truthful witness being the son of the Appellant and the Respondent, are perverse and not based on the complete reading of the said witness's evidence as a whole?

(d) Whether the Learned First Appellate Court's finding regarding the Appellant's alleged extramarital relation is perverse and arrived at in a cryptic and non-reasoned manner?

(e) Whether the evidence of RW2 Lata Fondekar deserved to be discarded as the same was apparently not based on her own personal knowledge but was based on the information she had received from third persons and therefore amounted to hearsay?

3. By order dated 13.12.2023, while admitting this Second Appeal, this Court had framed a substantial question of law dealing with patent perversity and non-application of mind on the part of the First Appellate Court by not considering the application of the Appellant under Order 41 Rule 27 of CPC.

4. Even if the above-framed question were answered in favour of the Appellant, that would entail a remand to the First Appellate Court, possibly to decide the first appeal afresh by considering the additional documents should any case be made for allowing the application under Order 41 Rule 27 of CPC.

5. This is a case in which the trial Court decreed the Appellant's suit and granted a decree of divorce. The First Appellate Court reversed this decree. The suit was instituted in 2008. At this point, if a remand can be avoided, it would be appropriate.

6. At least the first two questions now referred to by Mr Usgoankar arise in this appeal. The trial Court had accepted the evidence of PW2 Chirag Narvekar, the son of the Appellant and Respondent, and this was one of the reasons for decreeing the suit. The First Appellate Court has not accepted that the case of cruelty is made out based on this evidence. Mr Usgaonkar submits that there is perversity involved in the findings recorded by the First Appellate Court. Accordingly, the issue of findings regarding the Appellant not establishing cruelty or finding about alleged extramarital relation being perverse does raise a substantial question of law. The third question today proposed would in fact be subsumed in the first two questions, and therefore, there is no need to frame it separately.

7. In the case of *Commissioner of Income Tax-II, Ahmedabad, Gujarat Vs Mastek Limited*¹, the Hon'ble Supreme Court, in the context of the provisions similar to Section 100 of CPC contained in Section 260-A of the Income Tax Act, has held that the High Court's power to frame substantial question(s) of law at the time of hearing of the appeal other than questions on which the appeal has been admitted remains under Section 260-A(4). This power is subject, however, to two conditions: (i) the Court must be satisfied that the appeal involves such questions, and (ii) the Court has to record the reasons.

¹ (2014) 15 SCC 403

8. Accordingly, for the reasons discussed above, and after recording the satisfaction that two questions which are now proposed are indeed involved in this matter, the questions (c) and (d) referred to above are hereby framed for the purpose of this Second Appeal.

9. Now that the additional questions are framed, it is only appropriate that the Respondent is granted some time in the matter rather than the matter being taken up immediately for the final hearing, keeping in mind the ratio in *U.R. Virupakshappa v. Sarvamangala*², wherein the Hon'ble Supreme Court has held that, the judgments of the trial Court and the First Appellate Court could be interfered with only upon the formulation of a substantial question of law, if any, which had arisen for its consideration by the High Court. Furthermore, the High Court should not ordinarily frame a substantial question of law at a subsequent stage without assigning any reason and without giving a reasonable opportunity to hear the respondents. [See *Nune Prasad v. Nune Ramakrishna* [(2008) 8 SCC 258]; *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)].

10. In that case, the High Court had formulated a substantial question of law while dictating the judgment in open Court, and the Hon'ble Supreme Court held that before such a substantial question of law could

² (2009) 2 SCC 177

be considered, the parties should have been put to notice. They should have been given an opportunity to meet the same. That, 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, the requirements laid down in the proviso appended to Section 100 of the Code of Civil Procedure were required to be met.

11. Accordingly, the above two questions are framed in this appeal. To afford the Respondent sufficient time to answer them, this matter will be placed on 04.04.2024 under the caption of Part Heard.

12. Stand over to 04.04,2024 as part-heard.

M. S. SONAK, J.