

SLP(C)No. 4438 OF 2003
ITEM No.209

Court No. 5

SECTION IX
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.4438/2003

(From the judgement and order dated 26/08/2002 in SA 491/02
of The HIGH COURT OF BOMBAY)

VASANT GANPATI WADGAONKAR

Petitioner (s)

VERSUS

ASHOK LINGAPPA WAGHMARE

Respondent (s)

(For Final Disposal)

Date : 19/03/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s)Mr. Sushil Karanjkar, Adv. for
Mr. Venkateswara Rao Anumolu, Adv.

For Respondent (s)Dr. Rajeev B Masodkar, Adv. for
Mr. Anil K. Jha, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order. No costs.

(D.L.Chugh) (Vijay Aggarwal)
AR-cum-PS Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1737 OF 2004
(Arising out of SLP(C) No.4438 of 2003)

VASANT GANPATI WADGAONKARAppellant(s)

versus

ASHOK LINGAPPA WAGHMARERespondent(s)

O R D E R
Leave granted.

The above appeal has been filed against the judgment of a learned Single Judge of the High Court of Bombay dated 26.8.2002 in Second Appeal No.491 of 2002. Even at the SLP stage while issuing notice in this petition it was indicated as hereunder:

"Notice shall indicate as to why the impugned judgment should not be set aside and the matter be remitted to the High Court to consider whether any substantial question of law arose for consideration in the Second Appeal and the case may be disposed of at the SLP stage itself." Notice has been served on the respondent, who has also entered appearance through counsel.

Heard learned counsel appearing on either side.

Though the learned counsel for the respondent would contend that on the facts of the case substantial justice has been rendered and there is no need for remittance for fresh consideration afresh, we are of the view, that it is not a case where any need for finally adjudicating the matter on merits arise at this stage. The infirmity noticed in the order under challenge which necessitated the issuance of notice was the non adherence to the mandate contained in Section 100 of the Code of Civil Procedure and consequently the irregularity in the procedure adopted in not formulating the question of law before adjudicating the matter on the merits of the claims of parties. This Court on more than one occasion has pointed out the need for the High Court exercising power under Section 100 of the Code of Civil Procedure to first formulate the question of law for consideration of the claims of the respective parties on merits of the appeal before understanding a disposal on the merits of such claims. On this only ground we are setting aside the judgment of the High Court without expressing any opinion either way on the respective contentions of the parties.

The High Court shall restore the second appeal No.491 of 2002 to its original file and dispose of the same afresh in accordance with law in terms of the mandate, contained in Section 100 of the Code of Civil Procedure. The appeal is allowed and disposed of on the above terms. No costs.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)
New Delhi,
MARCH 19, 2004