

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2896 OF 2012
 (arising out of S.L.P. (Civil) No. 16139 OF 2011)

DILWAR SINGH (D) TH. HIS LRS.

Appellant (s)

VERSUS

PARAMJIT KAUR

Respondent(s)

O R D E R

Leave granted.

2. The defendant who had lost the matter before the trial court and the first appellate court, filed the second appeal before the High Court. The High Court in the impugned judgment running in seven fool-scap pages has considered the matter on merits, allowed the second appeal and set aside the judgment and decree of the two courts below but without formulating any substantial question of law.

3. Sections 100, 101 and 103 of the Code of Civil Procedure, 1908 read as under :

"S.-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.

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(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, not formulated by it, if it is satisfied that the case involves such question."

"S.101.-Second appeal on no other grounds.- No second appeal shall lie except on the ground mentioned in section 100."

"S.103.- Power of High Court to determine issues 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."

4. In the judgment delivered by us today in the case of Hardeep Kaur Vs. Malkiat Kaur, Civil Appeal No. 2870 of 2012 (Arising out of SLP (Civil) No. 15574 of 2011), while referring to the previous decisions of this Court in a long line of cases, namely, Kshitish Chandra Purkait v. Santosh

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Kumar Purkait and Others¹; and Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor²; Panchugopal Barua and Others v. Umesh Chandra Goswami and Others³; Sheel Chand v. Prakash Chand⁴; Kanai Lal Garari and Others v. Murari Ganguly and Others⁵; Ishwar Dass Jain (Dead) through L.Rs. v. Sohan Lal (Dead) by L.Rs.⁶; Roop Singh (Dead) through L.Rs. v. Ram Singh (Dead) through L.Rs.⁷; Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs.⁸; Chadat Singh v. Bahadur Ram and Others⁹; Sasikumar and Others v. Kunnath Chellappan Nair and Others¹⁰; C.A. Sulaiman and Others v. State Bank of Travancore, Alwayee and Others¹¹; Bokka Subba Rao v. Kukkala Balakrishna and Others¹²; Narayanan Rajendran and Another v. Lekshmy Sarojini and Others ¹³ and Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and Others¹⁴; Umerkhan v. Bismillabi alias Babulal Shaikh and Others¹⁵ and Shiv Cotex v. Tirgun Auto

Plast Private Limited and Others¹⁶, we held as follows :

".....The law consistently stated by this Court that formulation of substantial question of law is a

- 1(1997) 5 SCC 438
- 2(1999) 2 SCC 471
- 3(1997) 4 SCC 713
- 4(1998) 6 SCC 683
- 5(1999) 6 SCC 35
- 6(2000) 1 SCC 434
- 7 (2000) 3 SCC 708
- 8(2001) 3 SCC 179
- 9 (2004) 6 SCC 359
- 10(2005) 12 SCC 588
- 11 (2006) 6 SCC 392
- 12(2008) 3 SCC 99
- 13(2009) 5 SCC 264
- 14(2010) 13 SCC 216
- 15(2011) 9 SCC 684
- 16(2011) 9 SCC 678

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sine qua non for exercise of jurisdiction under Section 100 CPC admits of no ambiguity and permits no departure.

In the present case, the High Court has allowed the second appeal and set aside the judgment and decree of the first appellate court without formulating any substantial question of law, which is impermissible and that renders the judgment of the High Court unsustainable."

5. In view of the above legal position, the impugned judgment of the High Court is unsustainable and has to be set aside and is set aside accordingly. Regular Second Appeal No. 2540 of 2007 - Paramjit Kaur Vs. Dilwar Singh (since deceased) - is restored to the file of the High Court for fresh consideration in accordance with law.

6. Appeal is allowed with no order as to costs.

.....J.
(R.M. LODHA)

NEW DELHI;
MARCH 16, 2012

.....J.
(H.L. GOKHALE)

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ITEM NO.55

COURT NO.8

SECTION IVB

Petition(s) for Special Leave to Appeal (Civil) No(s).16139/2011

(From the judgement and order dated 08/03/2011 in RSA No.2540/2007
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

DILWAR SINGH (D) TH. HIS LRS.

Petitioner(s)

VERSUS

PARAMJIT KAUR

Respondent(s)

(With prayer for interim relief and office report)

Date: 16/03/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. V.K. Jhanji, Sr. Adv.
Ms. Jyoti Mendiratta, Adv.
Mr. Vaibhav Kumar, Adv.

For Respondent(s) Mr. Neeraj Kumar Jain, Sr. Adv.
Mr. Pratham Kant, Adv.
Mr. Ugra Shankar Prasad, Adv.

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

Leave granted.

Appeal is allowed with no order as to costs in terms
of the signed order.

(Rajesh Dham)
Court Master

(Renu Diwan)
Court Master

(signed order is placed on the file)