

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 5346 OF 2001

Dayananda & Others .. Appellants

Versus

Achu Poojary & Others .. Respondents

ORDER

This appeal emanates from the judgment dated 19.6.1998 of the High Court of Karnataka at Bangalore passed in Regular Second Appeal No. 279 of 1992.

We have heard learned counsel appearing for the parties and gone through the record.

From the impugned judgment, it is clearly borne out that the High Court set-aside the concurrent findings of facts of two courts without formulating any substantial questions of law which is mandatory according to Section 100 of the Code of Civil Procedure.

This Court in a relatively recent judgment in Gurdev Kaur & Others v. Kaki & Others reported in (2007) 1 SCC 546, has dealt with all relevant cases and came to the definite conclusion about the scope of interference by the High Court in a second appeal. In

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this case, this Court in paras 45, 49, 70 & 72 observed as under:

"45. The Amendment Act of 1976 has introduced drastic changes in the scope and ambit of Section 100 C.P.C. A second appeal under Section 100 C.P.C. is now confined to cases where a question of law is involved and such question must be a substantial one. Section 100, as amended, reads as under:

"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.

(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

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appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

49. A mere look at the said provision shows that the High Court can exercise its jurisdiction under Section 100 C.P.C. only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. The impugned judgment shows that no such procedure was followed by the learned Single Judge. It is held by a catena of judgments by this Court, some of them being, Kshitish Chandra Purkait v. Santosh Kumar Purkait (1997) 5 SCC 438 and Sheel Chand v. Prakash Chand (1998) 6 SCC 683 that the judgment rendered by the High Court under Section 100 C.P.C. without following the aforesaid procedure cannot be sustained. On this short ground alone, this appeal is required to be allowed.

70. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. 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 questions of law before hearing the appeal;
- (iv) Another part of the Section is that the appeal shall be heard only on that question.

72. When Section 100 C.P.C. is critically examined then, according to the legislative mandate, the interference by the High Court is permissible only in cases involving substantial questions of law."

This Court in a number of judgments has reiterated the legal position that the High Court would be justified in entertaining the second appeal under Section 100 of the Code of Civil Procedure only after formulating substantial questions of law.

Admittedly, in this case, the substantial questions of law have not been framed by the High Court. The High Court in the impugned judgment has overlooked the settled legal position. In this view of the matter, we are

constraint to set aside the impugned judgment and remit the second appeal to the High Court for deciding it afresh on merits after formulating substantial questions of law. Since the matter has been pending for quite a long time, we request the High Court to dispose of the second appeal as expeditiously as possible.

The appeal stands disposed of leaving the parties to bear their own costs.

(Dalveer Bhandari)

.....J.  
(Harjit Singh Bedi)

New Delhi;  
January 22, 2009.

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ITEM NO.123

COURT NO.9

SECTION IVA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 5346 OF 2001

DAYANANDA & ORS

Appellant (s)

VERSUS

ACHU POOJARY & ORS

Respondent(s)

(With office report )

Date: 22/01/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI  
HON'BLE MR. JUSTICE HARJIT SINGH BEDI

For Appellant(s) Mr. S.N. Bhat,Adv.

For Respondent(s) Mr. P.P. Singh,Adv. (not present)

Mr. Naveen R. Nath ,Adv (not present)

Mr. G.V. Chandrashekar, Adv. for  
Ms. Anjana Chandrashekar ,Adv

UPON hearing counsel the Court made the following  
ORDER

The appeal is disposed of in terms of signed order  
leaving the parties to bear their own costs.

(Pardeep Kumar)  
Court Master

(Neeru Bala Vij)  
Court Master

[SIGNED ORDER IS PLACED ON THE FILE ]