

IN THE SUPREME COURT OF INDIA

CIVIL APPELLAE JURISDICTION

CIVIL APPEAL NO. 5456 OF 2013
(arising out of S.L.P. (Civil) No.22771 of 2011)

LEELAWATI

Appellant(s)

VERSUS

AMAR CHAND

Respondent(s)

O R D E R

Service on the sole respondent is complete. The name of respondent's advocate Dr. Vinod Kumar Tiwari is shown in the cause list. However, he is not present. Nobody appeared on his behalf as well.

2. Leave granted.

3. Section 100 of the Code of Civil Procedure, 1908 (for short, 'Code') 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 appeal on any other substantial question of law, not formulated by it, if it is

satisfied that the case involves such question."

4. Section 100(1) makes it clear that appeal lies to the High Court from a decree passed in appeal by a court subordinate to it only when the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 provides that the High Court shall formulate a substantial question of law where it is satisfied that a substantial question is involved in the case. It is further provided in sub-section (5) of Section 100 that 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. However, this does not debar the respondent to submit before the Court that no such substantial question of law arises. In other words, in view of section 100(5), at the time of hearing of second appeal, it is open to the High Court to reformulate substantial question(s) of law or formulate fresh substantial question(s) of law or hold that no substantial question(s) of law is involved.

5. Jurisdiction of the High Court in hearing the second appeal under Section 100 of the Code has come up for consideration before this Court on numerous occasions. In a long line of cases, this Court has reiterated that the High Court has duty to formulate substantial question(s) of law before hearing the second appeal. As a matter of law, the High Court is required to formulate substantial question of law involved in the second appeal at the initial stage if it is satisfied that the matter deserves to be admitted and the second appeal has to be heard and decided on substantial question of law.

6. In *Umerkhan Vs. Bismillabil*, one of us (R.M. Lodha, J.) speaking for the Bench stated the legal position with regard to the jurisdiction of the High Court in hearing a second appeal in paras 11 and 12 of the Report thus:

"11. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question".

12. This Court has been bringing to the notice of the High Courts the constraints of Section 100 of the Code and the mandate of the law contained in Section 101 that no second appeal shall lie except on the ground mentioned in Section 100, yet it appears that the fundamental legal position concerning jurisdiction of the High Court in second appeal is ignored and overlooked time and again. The present appeal is unfortunately one of such matters where the High Court interfered with the judgment and decree of the first

appellate court in total disregard of the above legal position.

(emphasis supplied)"

7. The above principle of law laid down in Umerkhan¹ has been reiterated in a subsequent decision of this Court in Shiv Cotex V. Tirgun Auto Plast (P) Ltd.² where this Court stated as follows :

"11. The judgment of the High Court is gravely flawed and cannot be sustained for more than one reason. In the first place, the High Court, while deciding the second appeal, failed to adhere to the necessary requirement of Section 100 CPC and interfered with the concurrent judgment and decree of the courts below without formulating any substantial question of law. The formulation of substantial question of law is a must before the second appeal is heard and finally disposed of by the High Court. This Court has reiterated and restated the legal position time out of number that formulation of substantial question of law is a condition precedent for entertaining and deciding a second appeal."

8. The above two judgments have been followed in a comparatively recent decision of this Court in Hardeep Kaur Vs. Malkiat Kaur³.

9. We have carefully perused the judgment of the High Court. It is seen that in the impugned judgment, the High Court has not framed any substantial question of law and yet set aside the judgment and decree of the first appellate court affirming the decree of the trial court. Apparently, the High Court has ignored and overlooked the mandatory requirement of Section 100 of the Code. Section 100 does not permit the High Court to reverse the decree of the first appellate court without formulating any substantial question(s) of law and without deciding such question(s). The impugned judgment is thus unsustainable in the eye of law.

10. Consequently, appeal is allowed and the impugned judgment of the High Court is set aside. Second appeal being R.S.A. No. 1077 of 2008 titled "Amar Chand Vs. Smt. Leela Wati" is restored to the file of the High Court for fresh consideration in accordance with law.

11. No order as to costs.

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

