

A SUDAM KISAN GAVANE (D) THR. LRS. & ORS.

v.

MANIK ANANTA SHIKKETOD (D) BY LRS. & ORS.

(Civil Appeal No. 5272 of 2010)

B AUGUST 29, 2019

**[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]**

*Code of Civil Procedure, 1908: s.100 – Non-framing of substantial questions of law at the time of dictation of the judgment – Held: This procedure is not fair to the parties – The parties must know what are the substantial questions of law which the Court is required to answer in a particular case – It is only then that the parties and their counsel can properly assist the Court – As per s.100, an appeal can only lie if there is a substantial question of law involved in the appeal – Sub-section (3) states that the memorandum of appeal filed under s.100 should precisely state the substantial question of law involved in the appeal – It is only if the High Court is satisfied that a substantial question of law is involved in the case that it shall formulate that question – A duty is cast upon High Court to formulate the substantial questions of law in terms of sub-section (4) of s.100 – Therefore, normally the order of admission of the appeal should clearly indicate on what substantial questions of law the appeal has been admitted – Even if High Court is of the view that the substantial questions of law, as framed in the memorandum of appeal, are substantial questions of law, the order admitting the appeal should specifically state what are the questions of law on which the appeal is admitted – Thus, hearing of the appeal should revolve around the substantial questions of law and the Court at the final hearing cannot go beyond the substantial questions of law – If at the time of final hearing, the Court feels that there is some other substantial question(s) of law involved, it is not debarred from formulating that question even at that stage but hearing will have to be limited to substantial questions of law – Sub-section (5) also clearly lays down that the respondent has a right to urge that the substantial question(s) of law, as formulated, do not actually arise for consideration or that they are not substantial questions of law.*

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*Code of Civil Procedure, 1908: s.100, proviso – The proviso to s.100 makes it clear that the Court has the power to hear the appeal from any substantial questions of law not formulated by it, if it is satisfied that the case involves such questions – However, in such eventuality, the Court has to record its reasons for formulating such questions of law – This obviously means that the Court will pass a reasoned order while formulating the substantial question(s) of law at this stage – The natural corollary is that the parties have to be heard after the framing of such substantial questions of law – The hearing cannot be prior to the substantial questions of law.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5272 of 2010 C

From the Judgment and Order dated 10.06.2009 of the High Court of Judicature of Bombay, Bench at Aurangabad in Second Appeal No.281 of 1989.

Nishant R. Katneshwarkar, Anoop Kandari, B. Sridhar, Advs. for the Appellants. D

Sudhanshu S. Choudhari, Adv. for the Respondents.

The following Order of the Court was passed :

**ORDER** E

1. Without expressing any opinion on the merits of the case, we feel this case should be remanded to the High Court.

2. The second appeal under Section 100 of the Code of Civil Procedure came up for admission before the High Court on 11.06.1990. The High Court admitted the appeal without framing any question of law and the order reads: F

3. “Heard. Admit”

4. The appeal came up for hearing on 02.05.2009. Arguments were heard and judgment was reserved. The order dated 02.05.2009 also does not indicate that any question(s) of law was framed on that date. Thereafter, judgment was delivered on 10.06.2009. This judgment makes mention of certain substantial questions of law. It is obvious that these substantial questions of law were framed by the learned Judge at the time of dictation of the judgment. This procedure, in our opinion, is G  
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A not fair to the parties. The parties must know what are the substantial questions of law which the Court is required to answer in a particular case. It is only then that the parties and their counsel can properly assist the Court.

5. Section 100 of Code of Civil Procedure reads as under:

B “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.

C (2) An appeal may lie under this section from an appellate decree passed *ex parte*.

D (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.

E (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:

F 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.”

G 6. A bare reading of Section 100 of Code of Civil Procedure makes it abundantly clear that an appeal can only lie if there is a substantial question of law involved in the appeal. Sub-section (3) makes it clear that the memorandum of appeal filed under Section 100 of Code of Civil Procedure should precisely state the substantial question of law involved in the appeal. It is only if the High Court is satisfied that a substantial question of law is involved in the case that it shall formulate that question. A duty is cast upon the High Court to formulate the substantial questions of law in terms of sub-section (4) of Section 100 of Code of Civil  
H Procedure.

7. Therefore, normally the order of admission of the appeal should clearly indicate on what substantial questions of law the appeal has been admitted. Even if the High Court is of the view that the substantial questions of law, as framed in the memorandum of appeal, are substantial questions of law, the order admitting the appeal should specifically state what are the questions of law on which the appeal is admitted. Obviously, if no substantial question(s) of law arises then the appeal has to be dismissed at the threshold.

8. Sub-section (5) mandates that the appeal shall be heard on the questions so formulated. It is, thus, clear that the hearing of the appeal should revolve around the substantial questions of law and the Court at the final hearing cannot go beyond the substantial questions of law. We would, however, like to make it clear that if at the time of final hearing, the Court feels that there is some other substantial question(s) of law involved, it is not debarred from formulating that question even at that stage but hearing will have to be limited to substantial questions of law. Sub-section (5) also clearly lays down that the respondent has a right to urge that the substantial question(s) of law, as formulated, do not actually arise for consideration or that they are not substantial questions of law.

9. The proviso to Section 100 of Code of Civil Procedure makes it clear that the Court has the power to hear the appeal from any substantial questions of law not formulated by it if it is satisfied that the case involves such questions. However, it is important to note, that in such eventuality the Court has to record its reasons for formulating such questions of law. This obviously means that the Court will pass a reasoned order while formulating the substantial question(s) of law at this stage. The natural corollary is that the parties have to be heard after the framing of such substantial questions of law. The hearing cannot be prior to the substantial questions of law. We are clearly of the view that the High Court erred in hearing the appeal finally when questions of law have not been framed and formulated the questions of law only in the judgment.

10. Therefore, we set aside the order of the High Court on the short ground that the substantial questions of law were not framed before arguments were heard.

11. We remand the matter to the High Court and request the High Court to decide the questions of law after hearing the parties. We give liberty to the High Court to reframe the questions of law after hearing

- A the parties. We further request the High Court to treat this case as a second appeal having been filed in the year 1990 and give it priority accordingly.

- B It is stated that respondent no.2 has died and his legal representatives are not brought on record. In view of the order, which we have passed, we do not want any further delay in the appeal and leave it to the High Court to decide the effect of the death of respondent no.2 on the appeal.

The appeal is allowed in the aforesaid terms.

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Devika Gujral

Appeal allowed.