2026:AHC:79265

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 1905 of 1978

Smt. Qamrunnisa And Others .....Appellant(s)

Versus

Smt. Tamizan And Others .....Respondents(s)

Counsel for Petitioners(s) : R.U.Ansari

Counsel for Respondent(s) : Hari Narayan Singh, Pankaj Kumar Mishra, Rajendra Kumar Srivastava

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Court No. - 32

HON'BLE SAURABH SHYAM SHAMSHERY, J.

ORAL ORDER

1. Heard Sri R.U. Ansari, learned counsel for appellants. None appeared on behalf of respondents.

2. This is a defendants' second appeal of the year 1978 and pending for last more than 48 years.

3. Present second appeal was admitted vide order dated 07.04.1979 on substantial questions of law as stated in Grounds No. 1 and 6 of memo of appeal, which are reproduced hereinafter:

> *"i) Because the provisions of Order 41 Rule 31 C.P.C. are mandatory, the Court below has acted illegally and in excess of its jurisdiction in completely violating the provisions of aforesaid Rule, therefore, the judgment and decree passed by the court below is not sustainable in law.*

vi) Because the Valuation of the suit for the purpose of the jurisdiction was fixed Rs. 19,500/-, the learned Munsif where the suit was instituted by the plaintiff could entertain the suit upto valuation of Rs. 5000/- only. The suit was instituted by the plaintiffs in a court which had no pecuniary jurisdiction to entertain the suit. The defect of institution could not be cured by transfer of case to the court of S.C.C. under Section 24 C.P.C., the view taken to the contrary by the trial court and the finding recorded on issue no. 5 was wholly illegal, the court below has acted illegally in completely ignoring this aspect of the matter in spite of the fact that the same was pressed before him."

4. Section 100 CPC provides appeals from appellate decrees and it shall lie only if the High Court is satisfied that the case involves a substantial question of law. Sub-clause 3 of Section 100 CPC further provides that memorandum of appeal shall precisely state substantial question of law involve in appeal, whereas in present case in memorandum of appeal only grounds were mentioned and no substantial question of law was even mentioned therein. Therefore, the way this second appeal was admitted on basis of grounds treating them to be substantial questions of law was not appropriate (See, **R. Nagaraj (Dead) Through Lrs. and another vs. Rajmani and others, 2025 INSC 478).**

5. Still considering that this second appeal is pending for last more than 48 years, the Court proceed that above grounds are deemed to be substantial questions of law mentioned in memo of appeal but one consideration is still left that, whether said questions are substantial questions of law or not in terms of a judgment passed by Supreme Court in the case of **Chandraban (deceased) through Lrs. and others vs. Saraswati and others, 2022 SCC OnLine SC 1273** wherein the law with regard to "what is the substantial question of law" was discussed and relevant part of the judgment is reproduced hereinafter:

"31. To be "substantial", a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact

arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v.Purushottam Tiwari, (2001) 3 SCC 179] .)

32. The principles relating to Section 100CPC relevant for this case may be summarised thus:

32.1. An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

32.2.The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

32.3.The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a

total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

33.In this case, it cannot be said that the first appellate court acted on no evidence. The respondents in their second appeal before the High Court did not advert to any material evidence that had been ignored by the first appellate court. The respondents also could not show that any wrong inference had been drawn by the first appellate court from proved facts by applying the law erroneously."

6. Learned counsel for appellants vehemently pressed the first purported question of law, i.e., whether First Appellate Court was justified in dismissing first appeal without framing points for determination and has placed reliance on a judgment passed by Supreme Court in the case of **Nafees Ahmad and another vs. Soinuddin and others, 2025 INSC 520**, however, the Court finds that said judgment is in fact against the submission of counsel for appellants.

7. In **Nafees Ahmad (supra)** the High Court while considering a second appeal has formulated a similar nature of question of law and held that since First Appellate Court has not framed points for determination, therefore, appeal was returned back for fresh consideration. However, a challenge to it before Supreme Court was allowed and it was held that it is not always mandatory to frame points for determination and it would depend how the judgment was written. For reference entire judgment passed by Supreme Court in **Nafees Ahmad (supra)** is quoted hereinafter:

"1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Judicature at Allahabad, Lucknow Bench dated 4-9-2017 in Second Appeal No.69/2008, by which the Second Appeal filed by the respondents – herein came to be partly allowed and the matter was remitted to the First Appellate Court on the ground that the First Appellate Court failed to comply with the provisions of Order 41 Rule 31 of the Code of Civil Procedure (CPC).

3. The High Court, while deciding the Second Appeal, formulated the following substantial question of law:-

"Whether it is incumbent upon the Appellate Court to frame the point of determination as per the provisions of Order 41 Rule 31 CPC while deciding the first appeal or not?"

4. Order 41 Rule 31 CPC reads thus:

"Rule 31. Contents, date and signature of judgment.—

The judgment of the Appellate Court shall be in writing and shall state —

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

5. It appears that the High Court relying upon few decisions took the view that Order 41 Rule 31 CPC is mandatory and the failure on the part of the Appellate Court to frame the points for determination as per the provisions of Order 41 Rule 31 CPC would vitiate the entire judgment and make it wholly void.

6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are in complete disagreement with the view taken by the High Court.

7. We propose to follow the dictum as laid by this Court in the case of "G. Amalorpavam And Others v. R.C. Diocese of Madurai And Others" reported in (2006) 3 SCC 224, wherein this Court observed that whether in a particular case, there has been substantial compliance, with the provisions of Order 41 Rule 31 CPC should be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions, by itself, may not vitiate the judgment and make it wholly void and may be ignored if there has been a substantial compliance with it.

8. We may elaborate the issue a little further from a different angle.

9. The Privy Council observed in "Mt. Fakrunisa v. Moulvi Izarus" reported in AIR 1921 PC 55, at p. 56, as under:

"In every appeal it is incumbent upon the appellants to show reason why the judgment appealed from should be disturbed; there must be some balance in their favour

> *when all the circumstances are considered, to justify the alteration of the judgment that stands. Their Lordships are unable to find that this duty has been discharged."*

10. The Privy Council decision referred to above was looked into by a three-Judge Bench in the case of "Thakur Sukhpal Singh v. Thakur Kalyan Singh and Anr." reported in (1963) 2 SCR 733, wherein this Court observed as under:

> *"With respect, we agree with this and hold that it is the duty of the appellant to show that the judgment under appeal is erroneous for certain reasons and it is only after the appellant has shown this that the appellate court would call upon the respondent to reply to the contention. It is only then that the judgment of the appellate court can fully contain all the various matters mentioned in Ruel 31, Order 41."*

11. This Court observed in "Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Baya" reported in (1955) 2 SCR 1, at page 8: "Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: ... Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it."

12. The provisions of Rule 31 should therefore be reasonably construed and should be held to require the various particulars to be mentioned in the judgment only when the appellant has actually raised certain points for determination by the Appellate Court, and not when no such points are raised.

13. We must also look into the provisions of Rule 30 of Order 41 for the purpose of fortifying our interpretation of Rule 31. Order 41 Rule 30 CPC reads thus:

> *"30. Judgment when and where pronounced.— (1) The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.*
>
> *(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read*

> *out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment in pronounced."*

14. Thus, this Rule does not make it incumbent on the Appellate Court to refer to any part of the proceedings in the court from whose decree the appeal is preferred. The Appellate Court can refer, after hearing the parties and their pleaders, to any part of these proceedings to which reference be considered necessary. It is in the discretion of the Appellate Court to refer to the proceedings. It is competent to pronounce judgment after hearing what the parties or their pleaders submit to it for consideration.

> *It follows therefore that if the appellant submits nothing for its consideration, the Appellate Court can decide the appeal without any reference to any proceedings of the courts below and, in doing so, it can simply say that the appellants have not urged anything which would tend to show that the judgment and decree under appeal were wrong. [See : "Thakur Sukhpal Singh" (supra)]*

15. In the aforesaid view of the matter, we allow this appeal.

16. The impugned judgment and order of the High Court is set aside.

17. Pending applications, if any, also stand disposed of."

8. In order to consider above submissions including a submission that Trial Court has returned a perverse finding and has not appreciated the evidence on record, Court also takes note of judgment passed by First Appellate Court which has considered the order passed in suit whereby it was decreed and has rejected all grounds, as such, it was a judgment where there was no necessity to frame points for determination since it were not involved.

9. In above background Court also takes note of a judgment passed by Supreme Court in **Malluru Mallappa (D) Thru. Lrs. vs. Kuruvathappa and others, 2020 INSC 173** that if First Appellate Court has display conscious application of mind and record findings supported by reasons on all issues and contentions, the object of Section 96 CPC got satisfied.

10. So far as second purported ground/ question of law is concerned that the suit was decided by Trial Court vide order dated 18.08.1973, that concerned issue in suit was under valued and Court fee paid was insufficient, however, later on plaintiffs have amended suit and thereby corrected valuation and also made good deficiency, therefore, it was held that suit was not under valued. No such issue was pressed in first appeal. Memo of First Appeal is not on record. Otherwise also, it cannot be considered as a substantial question of law.

11. The Court also takes note of a very recent judgment passed by Supreme Court in the case of **Rusi Fisheries Pvt. Ltd. and another vs. Bhavna Seth and others, 2026 INSC 339** that it is settled law that findings of fact howsoever erroneous cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon a substantial question of law, if any, arisen therein. Therefore, once this Court has found that no substantial question of law or even a question of law worth consideration in present second appeal, there is no occasion for this Court to re-appreciate the evidence so as to come to a different conclusion.

12. In aforesaid circumstances, this second appeal is dismissed, since it does not involve substantial question of law purportedly framed when present second appeal was admitted. Interim order, if any, is vacated.

APRIL 10, 2026 **(Saurabh Shyam Shamshery,J.)**
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