

(2003) 09 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2558 of 1982

Shri Ram

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Citation : (2004) 2 ICC 390

Hon'ble Judges : G.S.Singhvi, J

Advocate : Shri G.S. Gandhi, Advocate.None., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.—The regular second appeal is directed against judgment and decree dated 2.6.1982 passed by Additional District Judge, Hisar dismissing the appeal filed by the appellant against judgment and decree dated 27.1.1982 of Sub Judge III Class, Hissar whereby she decreed the suit of the plaintiff against the defendants for recovery of Rs. 2690.84 with costs and future interest at the rate of 121/2% per annum from the date of its institution till realisation.

2. Brief facts :

Respondent No. 1 State Bank of India filed suit for recovery of Rs. 2690.84 against the appellant and respondents No. 2 and 3 by alleging that it had given agricultural term loan amounting to Rs. 3,500/ to the appellant for installation of Gobar Gas Plant in his village Badopatti, Tehsil and District Hissar on the condition of hypothecation of the equipments and he i.e. appellant agreed to pay interest at the rate of 12.5% per annum; that respondents Nos. 2 and 3 stood guarantee for repayment of loan; that the appellant had agreed to repay the loan in 10 half yearly instalments commencing from 15.12.1976; that the appellant had availed loan facility to the extent of Rs. 1200/ on 15.6.1976; and Rs. 1021.50 on 19.8.1976 but committed defaults in repayment of instalments; that a sum of Rs. 2690.84 had become due from the appellant on 5.1.1980 and the same was recoverable with future interest @ 12.5% per annum.

3. Respondents No. 2 and 3 did not contest the suit. In his written statement,

respondent No. 1 pleaded that the suit was liable to be dismissed because Branch Manager of the plaintiffsrespondent No. 1 was not authorised to file the same; that the bank did not have the locus standi to file the suit; that he had never taken loan from the plaintiffBank; that respondent No. 2 and 3 did not stand guarantee on the behalf. He also denied having executed hypothecation agreement in favour of the plaintiff. He also contested the rate of interest and pleaded that nothing was payable by him.

4. On the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to recover the amount of Rs. 2690.84 from the defendants as alleged in the plaint ? OPP

2. Whether the plaintiff has no locus standi to file the present suit against defendant No. 1, as alleged in para No. 3 in preliminary objections taken in the written statement ? OPD

3. Relief.

5. Plaintiffrespondent No. 1 examined Shri Kundan Lal Swami (PW1), Shri B.R. Chawla, Accountant (PW2), Shri Ramesh Kumar, Manager, M/s Aggarwal Industries, Uklana Mandi (PW3). Shri P.N. Khurana, Branch Manager, State Bank of India, Barwala (PW4), Shri H.L. Mehra (Branch Manager, State Bank of India, Hissar) (PW5). Defendant No. 1appellant examined himself as DW1 and Dani Ram as DW2.

6. On a consideration of the pleading and evidence produced by the parties, the learned trial court decided issue No. 1 in favour of the plaintiff respondent No. 1 and issue No. 2 against the defendants. Consequently, she passed decree for a sum of Rs. 2690.84 in favour of respondent No. 1 with costs and future interest @ 12.5% per annum from the date of the suit till the date of realisation. Learned trial court further declared that the equipment of the Gobar Gas Plant, mentioned in the composite hypothecation agreement, shall stand validly hypothecated in favour of the plaintiff to secure the payment of the decretal amount till the final realisation.

7. The appeal filed by the appellant was dismissed by Additional District Judge, Hissar, who independently analysed the evidence and held that the appellant was liable to pay Rs. 2690.84 to respondent No. 1.

8. At this stage, I consider it appropriate to mention that neither in the memo of appeal nor in the order admitting the appeal any question of law has been framed. Even during the course of arguments, learned counsel for the appellant could not formulate any substantial question of law arising in the appeal.

9. I have heard Shri G.S. Gandhi, learned counsel for the appellant, at considerable length and perused the record.

10. In my opinion, the appeal is liable to be dismissed because no question of law, much less a substantial question of law, arises in this case. Subsection (1) of

100 of the Code of Civil Procedure (for short, 'C.P.C.'), which provides for filing of second appeal from the appellate decree passed by any Court subordinate to the High Court, 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."

11. The expression "substantial question of law" has not been defined in the statute. Therefore, it will be appropriate to notice the judicial precedents in which the said expression has been interpreted in the context of Section 100 of the C.P.C. (as amended in 1976).

12. In *Panchugopal Barua v. Umesh Chandra Goswami*, 1997(2) RCR (Civil) 1 (SC) : (1997)4 SCC 713, their Lordships of the Supreme Court interpreted Section 100 of the Code of Civil Procedure, as amended in the year 1976, and observed :

"A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso to the section shows that nothing 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 the court is satisfied that the case involves such a question. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. The existence of a substantial question of law is thus, the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 CPC."

13. In *Ram Prasad Rajak v. Nank Kumar and brothers*, (1998) 6 SCC 748, the Supreme Court held ;

"Unless there was a substantial question of law, the High Court had no jurisdiction to entertain the second appeal and consider the merits. It has been held by this Court in *Panchugopal Barua v. Umesh Chandra Goswami* and *Kshitish Chandra Purkat v. Santosh Kumar Purkat* that existence of a substantial question of law is sine qua non for the exercise of jurisdiction under Section 100 CPC. In both the aforesaid cases, one of us (Dr. Anand, J.) was a party to the Bench and in the former, he spoke for the Bench."

14. In *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*, 1999(2) RCR (Civil) 587 (SC) : 1998(6) SCC 722, their Lordship of the Supreme Court lamented that the High Courts were deciding second appeals without formulating substantial questions of law and observed :

"It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances, two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substituted its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.

If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the documentary cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedur requiring interference in second appeal." (Underlining is mine)

15. In *Hari Singh v. Kanhaiya Lal*, 1999(4) RCR (Civil) 107 (SC) : (1999) 7 SCC 288, the Supreme Court refereed to its earlier judgments and observed :

"The purpose of amending Section 100 by the 1976 amending Act was to further limit the jurisdiction of the High Court. Prior to the amendment the interference could have been where an order was contrary to law or some usage having the force of law. But now it can only be if any substantial question of law arises. The words `substantial question of law' brought in have significance and are not superfluous. So now interference cannot be only because the order is contrary to law, but when the disputed issues raise a substantial question of law. Creation of powers or limiting such powers in the appellate authorities is always a decision based on public policy expressed in the maxim interest reipublicae ut sit finis litium. This policy brings to finality some issues or a litigation at some point of time. If no appeal is provided, the original order becomes final. Thus it is open

for the legislature to bring finality to the adjudication on question of facts up to the stage of first appeal and limit the second appeal to question of law or to the substantial question of law or to such other limitation which the legislature deems fit and proper." (Underlining is mine).

16. In *Santosh Hazari v. Purushottam Tiwari*, 2001(3) RCR (Civil) 243 (SC) : (2001) 251 ITR 84, their Lordships of the Supreme Court referred to the report of the Select Committee and the Statement of Objects and Reasons contained in the Bill vide which amendment in Section 100 of the C.P.C. was proposed and observed :

The phrase "substantial question of law", as occurring in the amended section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradiction with technical, of no substance or consequence, or academic merely. However, it is clear that the Legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many others provisions such as section 109 of the Code or article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. T. Ram Ditta*, AIR 1928 PC 172, the phrase "substantial question of law" as it was employed in the last clause of the then existing section 110 of the Civil Procedure Code (since omitted by the Amendment Act. 1973) came up for consideration and their Lordship held that it did not mean a substantial question of law of general importance but a substantial question of law which was involved in the case as between the parties. In *Sir Chunilal V Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.*, AIR 1962 SC 1314 : (1962) Supp. 3 SCR 549, the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veraju*, AIR 1951 Mad 969 : ILR 152 Mad. 264 (FB) (page 1318):

".....when a question of law is fairly arguable, where there is room for difference of opinion on it or where the court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand, if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining whether a question of law raised in the case is substantial (page 1318) :

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this court or by the Privy Council or by the Federal Court or it not free from difficulty or calls for discussion of alternative views. If the question is settled by

the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law".....

A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial", a question of law must be debatable, not previously precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law "involved 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."

17. From the above survey of judicial precedence, the following principles can be deduced :

(a) An appeal under Section 100 of the Code of Civil Procedure cannot be entertained unless a substantial question of law arises for consideration by the High Court.

(b) To be substantial, a question of law must be debatable and must have a material bearing on the decision of the case and the rights of the parties.

(c) A point of the law which admits of no two opinions may be a proposition of law but cannot be treated as a substantial question of law.

(d) If the question raised in the appeal is already settled by the highest Court of the country or the jurisdictional High Court, then the same cannot be regarded as a substantial question of law. Similarly, if the general principles to be applied in determining the question are well settled and the only issue relates to application of those principles to the particular facts of the case, then no substantial question of law can be said to arise in the appeal.

(e) That if the conclusions recorded by the First Appellate Court are plausible, then it would not be a case of substantial question of law.

(f) The finding of fact recorded by the first Appellate Court cannot be disturbed by the (sic) or is such which no person of reasonable prudence could arrive at in the given facts of the case.

18. Having noticed the relevant statutory provision and its interpretation by the

Supreme Court, I may now revert to the case in hand. Shri G.S. Gandhi, learned counsel for the appellant vehemently argued that even though the Courts below have recorded concurrent findings on both the issues, the same should be declared as perverse and the impugned judgments and decrees should be set aside because the learned Sub Judge and the learned Additional District Judge misdirected themselves in appreciating the evidence produced by the appellant. Shri Gandhi pointed out that no evidence was produced by respondent No. 1 Bank to prove that the equipments for setting up Gobar Gas Plant had been supplied to defendant No. 1 appellant by M/s Agarwal Industries, Uklana. He then argued that the amount given by the Bank of M/s Aggarwal Industries, Uklana cannot be recovered from the appellant because there was no privity of contract between the appellant and M/s Aggarwal Industries, Uklana.

19. In my view, there is no merit in the arguments of the learned counsel. A reading of the impugned judgments and decrees shows that the learned Sub Judge evaluated the entire evidence and recorded a finding of fact that the loan had been advanced to the appellant and that he had failed to repay the same. Kundan Lal Swami (PW1) and B.R. Chawla (PW2), who appeared on behalf of the plaintiff respondent No. 1, categorically stated that the loan had been sanctioned in favour of defendant No. 1 appellant and the defendants had executed the documents. They further deposed that the defendants had regularly come to the Bank in connection with the sanction and disbursement of the loan. Ramesh Kumar, Manager of M/s Aggarwal Industries, Uklana, who appeared as PW3, proved that Gobar Gas Plant equipments had been supplied to defendant No. 1 appellant after receipt of the amount from the Bank. In his statement, defendant No. 1 appellant did not dispute his own signatures on composite hypothecation agreement Exhibit P1. He also admitted revival letter Exhibit P3. The plea of defendant No. 1 appellant that the equipments had not been supplied by M/s Aggarwal Industries, Uklana was discarded by the trial Court by assigning cogent reasons. The learned Additional District Judge independently evaluated the entire evidence and confirmed the findings of fact recorded by the trial Court. This is clearly borne out from the following extracts of the appellate judgment :

"As it is, Siri Ram has denied any such purchase of the Gobar Gas Plant. But men may lie circumstances do not. The cross examination of Ramesh Kumar P.W.3 makes an interesting reading. A suggestion was put to him that similar types of Gobar Gas Plants were supplied by his firm to Siri Ram defendant, Nihal Singh and Ram Kumar. This witness has denied the said suggestion and has categorically stated that different types of Gobar Gas Plants were supplied to the aforesaid persons. He has given the details of the Plants supplied to Nihal Singh and the value of which was Rs. 1135/-. In reply to another question, this witness has admitted that Siri Ram was also supplied a Gobar Gas Plant of the same value. From the cross examination of Ramesh Kumar P.W.3, it is clearly made out that the defendant is admitting the factum of the supply of a Gobar Gas Plant. Even otherwise, Ramesh Kumar P.W.3 has no animus against the appellant so as would come forward and make a false statement on oath. He has also not been

shown to be interested in the plaintiff Bank so as would become a party to any such alleged fraud. From all this, it is clearly made out that besides the sum of Rs. 1200/ initially taken by the defendant appellant as loan from the plaintiff Bank, Gobar Gas Plant worth Rs. 1021.50 paise was also supplied to him by the plaintiff bank through M/s Aggarwal Industries, Uklana. Both these payments are thus clearly proved on the record. It has been admitted by the plaintiff Bank that the defendant paid a sum of Rs. 600/. No other payment has been either pleaded or proved by the defendant. Obviously therefore, the claim filed by the plaintiff Bank is just and proper and there is nothing on the record that may go to suggest that the same is either false or incorrect."

20. In my opinion, the current findings recorded by the Courts below do not suffer from any legal infirmity and the mere possibility of this Court coming to a different conclusion cannot justify interference with the impugned judgments and decrees.

21. In the premises aforesaid, I hold that no question of law, much less a substantial question of law, arises for determination in this appeal which is liable to be dismissed. Ordered accordingly. However, the parties are left to bear their own costs.