

ABDUL RAHEEM

v.

THE KARNATAKA ELECTRICITY BOARD AND ANR.

NOVEMBER 20, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Civil Procedure Code, 1908; Section 100:

Substantial question of law—Formulation of—Specific performance of contract—Agreement for sale of land entered into between appellant and respondent No.1—Suit for specific performance on ground of non-performance of part of contract by other party—Dismissed by trial Court—Appeal dismissed by first appellate Court—Appeal filed thereagainst dismissed by High Court holding that appellate Court failed to interpret terms of the agreement—On appeal, Held: Non-consideration of relevant fact and consideration of irrelevant fact would give rise to a substantial question of law—Reversal of findings of fact arrived at by first appellate Court ignoring vital document may also lead to a substantial question of law—High Court failed to formulate the substantial questions of law—Hence, the matter remitted to High Court for consideration afresh upon formulation of the question—Specific Relief Act, 1963—Non-performance of part of contract.

An agreement for sale of land in question was entered into by and between the appellant and respondent No.1. Since appellant did not perform his part of contract, respondent No.1 filed suit for specific performance of contract. The same was dismissed by trial Court. An appeal preferred thereagainst by respondent No.1 was dismissed by the first appellate Court. Second appeal preferred by respondent No.1 before the High Court was allowed by the High Court holding that the first appellate Court failed to interpret the clauses of the agreement in their proper perspective; and that it applied the provisions contained in

A Section 22 of the Specific Relief Act directing refund of the earnest amount in a mechanical manner. Hence the present appeal.

B Appellant contended that the purported substantial questions of law formulated by the High Court do not meet the requirements of Section 100 of the Code of Civil Procedure Code; and that having regard to the factual findings arrived at by the first appellate Court, the High Court should not have interfered therewith in exercise of its power under Section 100 of the Code.

C Allowing the appeal, the Court

HELD: 1.1. A substantial question of law ordinarily would arise from the finding of facts arrived at by the trial Court and the first appellate Court. The High Court's jurisdiction in terms of Section 100 of the Code is undoubtedly limited. [Para 10] [394-C]

D 1.2. The question as to whether the plaintiff was ready and willing to perform its part of contract by itself may not give rise to a substantial question of law. [Para 11] [394-D]

E 1.3. However, there cannot be any doubt whatsoever that consideration of irrelevant fact and non-consideration of relevant fact would give rise to a substantial question of law. Reversal of a finding of fact arrived at by the first appellate Court ignoring vital documents may also lead to a substantial question of law. [Para 12] [394-E]

F *Vidhyadhar v. manikrao & Anr.*, [1999] 3 SCC 573, relied on.

G 2. Ordinarily, on the failure of the High Court to formulate substantial questions of law within the meaning of Section 100 of the Code, the appeal should have been allowed. However, since respondent no.1 had already parted with a substantial portion of the consideration amount as also upon having paid a large sum towards conversion charges, in the interest of justice another opportunity should be given to the High Court to frame proper substantial questions of law arising in the matter. Hence, the impugned judgment is set aside and the matter is remitted back to the High Court for consideration of the matter afresh

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upon formulation of a substantial question of law.

[Para 13 and 15] [395-A, B; 396-E]

Commissioner of Customs (Preventive) v. Vijay Darsharath Patel, [2007] 4 SCC 118 and P. Chandrasekharan & Ors. v. S. Kanakarajan & Ors., [2007] 5 SCC 669, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5320 of 2007.

From the Judgment/final Order dated 15.9.2005 of the High Court of Karnataka at Bangalore in R.S.A. No. 238/2000.

Nagendra Rai, Praveen Swarup, Anis Ahmed Khan, R.K. Singh, Shoib Ahmad and Rahmat Ullah Kotwal for the Appellant.

Basava Prabhu S. Patil, V.N. Raghupathy, B. Subrahmanya Prasad, Narayan P. Kengasur and Chander Shekhar Ashri for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Defendant in a suit for specific performance of contract is before us aggrieved by and dissatisfied with a judgment and order dated 15.09.2005 passed by the High Court of Karnataka in R.S. A. No. 238 of 2000 whereby and whereunder the appeal preferred by Respondent No. 1 herein arising out of a judgment and decree dated 25.01.2000 passed in R.A. No. 5 of 1992 was dismissed.

3. An agreement for sale was entered into by and between the defendant - appellant and the plaintiff - Respondent No. 1 for sale of 4 acres, 4 guntas of land in Survey No. 112/A, Chhidri village. A suit for specific performance of contract was filed by the plaintiff - Respondent No. 1 on the premise that the appellant did not perform his part of contract. The said suit was dismissed. It was, however, *inter alia* held by the Trial Court that Respondent No. 1 was all along ready and willing to perform its part of contract. An appeal preferred thereagainst by the respondent No. 1 was dismissed.

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- A 4. The First Appellate Court in arriving at its decision *inter alia* held:
- (i) Respondent No. 1 without any reason withheld payment of balance consideration of Rs. 13,100/- and, thus, failed to perform its part of contract.
 - B (ii) Respondent No. 1 was not always ready and willing to perform its part of contract and somehow wanted to transfer liability on the defendant as regards conversion fine and measurement charges.
 - C (iii) The findings of the Trial Court that the plaintiff – Respondent No. 1 was always ready and willing to perform its part of contract was not correct.
 - D (iv) The plaintiff – Respondent No. 1 did not approach the court with clean hands and, thus, was not entitled to the discretionary relief of specific performance of contract.

5. On a second appeal having been preferred by Respondent No. 1 before the High Court, the following substantial questions of law were framed:

- E “(i) Whether both the courts have erred in refusing the specific performance although the respondents received full consideration amount and a sum of Rs. 8,000/- towards development charges?
- (ii) Whether the appellate court is justified in holding that the plaintiff was not ever ready and willing to perform his part of the contract?
- F (iii) Whether the courts below have not committed any error in directing to refund the earnest money?”

6. The High Court *inter alia* considering the stipulations made in agreement for sale and other evidences brought on records, opined:

- G (i) It was for the defendant to bear the conversion expenses. Admittedly when the amount of Rs. 94,000/- and odd was paid to him, he was bound to perform his part of contract by executing a deed of sale in favour of the plaintiff – Respondent
- H No. 1.

(ii) The First Appellate Court failed to interpret the clauses of the agreement in their proper perspective. A

(iii) It applied the provisions contained in Section 22 of the Specific Relief Act directing refund of the earnest amount only in a mechanical manner. B

7. The plea of Respondent No. 1 that it was ready and willing to forgo four guntas of land was held by the High Court sufficient to meet the demand of the defendant – appellant stating:

“15. For the foregoing reasons, it is to be held that both the Court below have erred in interpreting Ex. P.1 in the proper perspective and rejecting for specific performance. Hence, the substantial question No. 1 rests in favour of the appellant and further the finding of the lower appellate court for the plaintiff was not ready and willing to perform his part of contract is with a basis and as such the same is to be reversed and as also the 2nd substantial question of law to be held in favour of the appellant. In so far as the 3rd substantial question of law is concerned in the event if the courts below have considered the fact of hardship and in the event if the courts below would have ordered for specific performance, then order for refund of money instead of ordering for specific performance would be perverse. Accordingly, it is held necessarily in favour of the appellant.” C D E

8. Mr. Nagendra Rai, learned senior counsel appearing on behalf of the appellant submitted that the purported substantial questions of law formulated by the High Court do not meet the requirements of Section 100 of the Code of Civil Procedure (Code). It was further urged that having regard to the factual findings arrived at by the First Appellate Court, the High Court should not have interfered therewith in exercise of its power under Section 100 of the Code. F G

9. Mr. Basava Prabhu S. Patil, learned counsel appearing on behalf of the respondents, on the other hand, drew our attention to the factual matrix involved in the matter. It was contended that Respondent No. 1 was put in possession pursuant to the agreement for sale. A question, H

A however, arose as to who on conversion of the user of the land would pay the conversion fine. It was submitted that Respondent No. 1 paid the said amount also.

B In the aforementioned situation, interpretation of Clause 3 of the agreement arose for consideration in the factual matrix obtaining in the matter, viz., Respondent No. 1 not only paid a sum of Rs. 73,000/- out of the total amount of consideration of Rs. 86,100/- but also paid a sum of Rs. 21,431.55 and Rs. 35.00 towards the conversion fine and measurement fees respectively.

C 10. A substantial question of law ordinarily would arise from the finding of facts arrived at by the Trial Court and the First Appellate Court. The High Court's jurisdiction in terms of Section 100 of the Code is undoubtedly limited.

D 11. The question as to whether the plaintiff was ready and willing to perform its part of contract by itself may not give rise to a substantial question of law. Substantial question of law should admittedly be formulated relying on or on the basis of findings of fact arrived at by the Trial Court and the First Appellate Court.

E 12. However, there cannot be any doubt whatsoever that consideration of irrelevant fact and non-consideration of relevant fact would give rise to a substantial question of law. Reversal of a finding of fact arrived at by the First Appellate Court ignoring vital documents may also lead to a substantial question of law.

F In *Vidhyadhar v. Manikrao and Anr.*, [1999] 3 SCC 573, this Court held:

G “23. The findings of fact concurrently recorded by the trial court as also by the lower appellate court could not have been legally upset by the High Court in a second appeal under Section 100 CPC unless it was shown that the findings were perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion.”

H [See also *Iswar Bhai C. Patel alias Bachu Bhai Patel v. Harihar*

Behera and Anr., [1999] 3 SCC 457

13. Ordinarily, we would have allowed the appeal on the failure of the High Court to formulate substantial questions of law within the meaning of Section 100 of the Code, but, we feel that as the plaintiff – Respondent No. 1 had already parted with a substantial portion of the consideration amount as also upon having paid a large sum towards conversion charges, in the interest of justice another opportunity should be given to the High Court to frame proper substantial questions of law arising in the matter.

14. We may, however, notice a few decisions in regard to the jurisdiction of the High Court under Section 100 of the Code.

In *Commissioner of Customs (Preventive) v. Vijay Dasharath Patel*, [2007] 4 SCC 118, this Court held:

“22. We are not oblivious of the fact that the High Court’s jurisdiction in this behalf is limited. What would be substantial question of law, however, would vary from case to case.

23. Moreover, although, a finding of fact can be interfered with when it is perverse, but, it is also trite that where the courts below have ignored the weight of preponderating circumstances and allowed the judgment to be influenced by inconsequential matters, the High Court would be justified in considering the matter and in coming to its own independent conclusion. (See *Madan Lal v. Gopi.*)

24. The High Court shall also be entitled to opine that a substantial question of law arises for its consideration when material and relevant facts have been ignored and legal principles have not been applied in appreciating the evidence. Arriving at a decision, upon taking into consideration irrelevant factors, would also give rise to a substantial question of law. It may, however, be different that only on the same set of facts the higher court takes a different view. [See *Collector of Customs v. Swastic Woollens (P) Ltd. and Metroark Ltd. v. CCE.*]

25. Even in a case where evidence is misread, the High Court would

A have power to interfere. (See *W.B. Electricity Regulatory Commission v. CESC Ltd. and also Commr. of Customs v. Bureau Veritas.*)

26. In *Dutta Cycle Stores v. Gita Devi Sultania* this Court held:
B (SCC p. 587, para 4)

C “4. Whether or not rent for the two months in question had
D been duly paid by the defendants is a question of fact, and with a finding of such fact, this Court does not ordinarily interfere in proceedings under Article 136 of the Constitution, particularly when all the courts below reached the same conclusion. But where the finding of fact is based on no evidence or opposed to the totality of evidence and contrary to the rational conclusion to which the state of evidence must reasonably lead, then this Court will in the exercise of its discretion intervene to prevent miscarriage of justice.”

[See also *P. Chandrasekharan and Ors. v. S. Kanakarajan and Ors.*, [2007] 5 SCC 669].

E 15. We, therefore, set aside the impugned judgment and remit the matter back to the High Court for consideration of the matter afresh upon formulation of a substantial question of law. The appeal is allowed. No costs.

S.K.S.

Appeal allowed.