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ROLE OF SUBSTANTIAL QUESTION OF LAW IN ADMITTING SECOND APPEAL

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ABSTRACT:

The principle of substantial question of law plays a pivotal role in the adjudication of second appeals within the Indian judicial system. This research paper delves into the nuances of this principle as embedded in Section 100 of the Code of Civil Procedure (CPC), 1908. The paper examines the legislative intent behind incorporating this requirement, its judicial interpretation, and its practical implications on the appellate process. By exploring a range of landmark Supreme Court judgments, the study highlights the criteria used to ascertain what constitutes a substantial question of law. It further analyses the distinction between first and second appeals, emphasizing the restricted scope of second appeals to questions of law rather than facts. The research underscores the importance of this principle in ensuring that only those appeals with significant legal questions reach higher appellate courts, thus preventing frivolous litigation and preserving judicial resources. Through a comparative analysis with other jurisdictions, the paper offers insights into the effectiveness of this legal filter and proposes recommendations for enhancing its application. The study concludes that a rigorous and clear interpretation of substantial questions of law is essential for maintaining the integrity and efficiency of the appellate judicial process.

KEYWORDS: Substantial Question of Law, Second Appeal, Judicial Precedents, Civil Procedure Code, Appellate Jurisdiction

INTRODUCTION:

BACKGROUND:

An appeal, as defined by Black's Law Dictionary, is the formal process of bringing a complaint to a higher court regarding an alleged injustice or error committed by a lower court, with the aim of having the superior court correct or reverse the decision. In this framework, a second appeal specifically addresses the decree issued by the court that heard the initial appeal. This procedural

mechanism is not merely a legal right but a substantive statutory right, meaning that it can only be invoked when explicitly provided for by law. The purpose of the second appeal is to ensure that any legal errors made during the first appeal are rectified, thereby upholding the integrity of the judicial process.

In the context of civil litigation, the right to appeal emerges when a judgment is rendered by a lower court against a party. The aggrieved party may exercise the right to a first appeal by petitioning an appellate court to review the lower court's decision. This appellate review involves a thorough examination of the trial court's proceedings and the legal principles applied. Should the appellate court find merit in the appeal, it may issue a new judgment. However, when a party contends that there has been a significant legal error that impacts the court's decision, they can seek a second appeal. This appeal focuses on the "substantial question of law," which involves a critical legal issue that could potentially alter the outcome of the case if interpreted differently.

The substantial question of law is the cornerstone of the second appeal. It is a legal issue so pivotal that it requires the higher court's intervention to ensure that justice is served. When a party files for a second appeal, they are essentially arguing that the lower court's judgment was influenced by an incorrect application or interpretation of the law. If the higher court acknowledges the presence of a substantial question of law, it will proceed to review the case, considering the legal principles and precedents that may influence the final judgment. The decision of the second appellate court is binding on both parties, underscoring the importance of accurately identifying and addressing substantial legal questions to maintain the fairness and consistency of the judicial system.

IMPORTANCE OF APPEALS IN THE JUDICIAL SYSTEM:

An appeal from any order typically lies with the court to which an appeal from the decree in the related suit would lie. For instance, if an order is issued by a lower court, an appeal against this order would go to the appellate court that would handle appeals from decrees in similar suits. When such an order is passed by a court exercising appellate jurisdiction (excluding a High Court), the appeal would lie with the High Court. Thus, the first appeal usually takes place in the designated appellate court. In practical terms, if a suit is filed in a lower court, the party adversely affected by the decision has the right to file a first appeal, often in the district court.

When a party files a first appeal in the district court following an unfavourable decree from a

lower court, the district court conducts a thorough review and issues a new decree. However, if the party believes that there is a significant legal question that has been overlooked or misinterpreted, they can file a second appeal. This second appeal is directed to the High Court, which will then examine the substantial question of law raised. If a suit is initially filed in the district court, the first appeal is heard by the High Court. Should there still be unresolved legal questions of substantial importance, a second appeal can be made to the Supreme Court.

The structure of appeals ensures that each level of the judiciary can correct errors and address legal questions that could impact the outcome of a case. The appellate court, which handles the first appeal, thoroughly reviews the trial court's decisions. If further legal clarification is necessary, the High Court handles the second appeal, focusing on substantial questions of law. In cases where the initial suit is heard by the district court, the first appeal will be heard by the High Court, and any subsequent appeal involving substantial legal issues will proceed to the Supreme Court. This hierarchical system ensures that justice is thoroughly examined and upheld at each judicial level.

UNDERSTANDING SUBSTANTIAL QUESTION OF LAW:

DEFINITION AND LEGAL INTERPRETATION:

The phrase "substantial question of law" is not explicitly defined in the Code of Civil Procedure (CPC), although it is used in the Constitution and various other statutes. The term "substantial" denotes something essential and worthy of consideration, indicating its great importance. The substantial question of law is derived from judicial pronouncements and varies depending on the facts and circumstances of each case. This concept ensures that only significant legal issues, which could potentially alter the outcome of a case, are brought before higher courts for review.

A substantial question of law is a *sine qua non* for exercising jurisdiction under Section 100 of the CPC, meaning it is an essential condition and absolutely necessary for the court's authority in second appeals. This requirement ensures that higher courts focus on important legal principles rather than re-evaluating factual determinations made by lower courts. By concentrating on substantial questions of law, the judicial system maintains a clear distinction between the roles of trial courts and appellate courts, ensuring that the appellate process serves its intended purpose of clarifying and refining legal standards.

CRITERIA FOR DETERMINING SUBSTANTIAL QUESTIONS OF LAW:

Although the term "substantial question of law" is not explicitly defined in the Code of Civil Procedure (CPC), certain criteria can help determine whether a question of law is substantial. A question of law can be considered substantial if it meets the following tests:

1. It should be of general importance, meaning that it holds significance beyond the immediate parties involved and can impact the broader legal framework or public interest.
2. It should directly or substantially affect the rights of the parties, implying that the resolution of this question is crucial to the outcome of the case.
3. It should be open to debate, suggesting that there is room for differing interpretations and that it has not been definitively settled by legal precedent.
4. It should not have been decided by any higher court or settled by provisions of any statute, indicating that the question remains unresolved and requires judicial determination.

These criteria ensure that the appellate courts focus on resolving important legal questions that have broader implications and are essential for the fair adjudication of the parties' rights.

JUDICIAL PRONOUNCEMENTS ON SUBSTANTIAL QUESTIONS OF LAW:

There are some landmark Judgments Defining Substantial Questions of Law–

1) Chunnilal v. Mehta vs. Century spinning & manufacturing, 1962 AIR 1314, 1962 SCR SUPPL. (3) 549ⁱ: - In this landmark case the dispute arose from a financial transaction where Chunnilal sought to enforce a claim, but the legal contention centred around whether certain issues raised constituted a substantial question of law, thereby meriting consideration by a higher court. The Supreme Court held that-

- a) Any question of public interest,
- b)
 - i) any question which directly and substantially affects the rights of the parties and not has been decided by any court.
 - ii) any question which is not free from difficulties or allows alternative views.
- c) If the questions are well settled than it would not be the substantial question of law.

2) Nazir Mohamed vs. Kamala & Ors, AIR 2020 SUPREME COURT 4321, AIRONLINE 2020 SC 715ⁱⁱ: - In this case the dispute arose over claiming a property ownership. The Supreme Court determined that the legal questions presented by the appellant did not meet the threshold of a substantial question of law, after scrutinizing all the allegations and issues raised by Nazir

Mohamed. This case is similar as Chunnilal V. Mehta vs. Century Spinning & Manufacturing and Raghunath Pratap Singh vs. Deputy Commissioner Pratapgarh.

3) Raghunath Pratap Singh vs. deputy commissioner pratapgarh, 1927ⁱⁱⁱ: - In this case the issues concerning the administrative orders on land revenue and administrative law in British India. The main points arising from the Privy Council's judgment are as follows-

- The question to be the substantial question of law must not necessarily be of General Importance.
- Any question of law which affects the judgement between the parties is the substantial question of law.

4) SBI vs. S.N. Goel, 2000^{iv}: - In this case, the disciplinary actions taken by the State Bank of India (SBI) against S.N. Goel. S.N. Goel who was an employee of SBI, was subjected to disciplinary proceedings following allegations of financial mismanagement and misconduct. The Supreme Court states that- any question of law which affects the final decision in the case is the substantial question of law.

OVERVIEW OF FIRST APPEALS UNDER THE CODE OF CIVIL PROCEDURE, 1908:

Section 96 of the Code of Civil Procedure (CPC) deals with the provision of first appeal. According to this section, a first appeal is a valuable right granted to the parties involved in a litigation, allowing them to be heard on both questions of law and fact. The jurisdiction for first appeals, second appeals, and revisions is conferred by the legislature. In the case of Madhukar v. Sangram (2000) 1 2 LRI 1126^v, it was established that it is the duty of the lower appellate court to review the entire evidence afresh, consider the grounds and reasons presented by the trial court, and provide a reasoned decision. Similarly, in Ram Bhajan v. Abdul Rehman AIR 1997 P & H 120^{vi}, it was reiterated that the lower appellate court must reassess all evidence to ensure a fair judgment.

An appeal does not lie against mere findings recorded by a court unless those findings result in a decree or order. For instance, if a suit is dismissed and the defendant receives an adverse finding on some issues, they do not have the right to appeal those findings unless they constitute a decree or order. This principle was established in Deva Ram v. Ishwar Chand AIR 1996 SC 378^{vii}. Moreover, parties can appeal on limited questions (AIR 1994 AP 16^{viii}), but cannot re-agitate abandoned pleas (Mahesh Chand Sharma v. Raj Kumari Sharma AIR 1996 SC 869, (1996) 8 SCC 128^{ix}). Furthermore, pleas concerning inadequacy of evidence cannot be raised for the first time on appeal (FCI v. Williamson Major & Co, AIR 1999 Cal 219 (DB^x)).

Section 96 of the CPC elaborates on first appeals as follows:

1. An appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court, except where otherwise expressly provided in the CPC or by any other law for the time being in force.
2. An appeal may lie from an original decree passed ex parte.
3. No appeal shall lie from a decree passed by the court with the consent of the parties.
4. No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, where the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

The party adversely affected by the decree, or their legal representative, can file an appeal under Section 96(1). Appeals may also be made against ex-parte decrees [Section-96(2)], but no appeal is allowed from a decree passed with the consent of parties [Section-96(3)]. This is based on the principle of estoppel, where once a decree is passed with the consent of the parties, they are bound by it, creating an estoppel as a judgment on consent.

Section 96(4) specifies that no appeal shall lie in petty cases, and appeals can be made against preliminary decrees unless a final decree has been passed before the date of filing an appeal. There is no appeal against a decree when there was no appeal against the preliminary decree, as the final decree derives its existence from the preliminary decree (Section 97).

Conditions and Grounds for First Appeal:

Conditions- An appeal can be filed against every decree passed by any court in exercise of original jurisdiction upon the satisfaction of the following conditions:

- The subject matter of appeal must be a “decree”.
- a person claiming under a title party to the suit or a transferee of interests of such party, who so far as interest is concerned, is bound by the decree, provided his name is entered on the record of the suit. [Section 146]
- a guardian ad-litem appointed by the court in suit by or against a minor. [Section 147, Order 32, Rule 5]
- the party appealing must have been adversely affected by such determination.

Grounds- Order XLI, Rule 1 to 4 deals with the grounds of a first appeal on which the judicial

examination is invited. The requirements are-

- a. it must be in the form of memorandum setting forth the grounds of objections to the decree appealed from.
 - b. it must be signed by the appellant court or his pleader.
 - c. it must be presented to the court.
 - d. The memorandum must be accompanied by a certified copy of the decree.
 - e. The memorandum must be accompanied by a certified copy of the judgement unless the court dispenses with it.
 - f. Where the appeal is against a money decree, the appellant must deposit the amount or furnish the security in respect thereof as per the direction of the court.
- As per Rule 2, the party shall not except with the leave of the court take any grounds of objection other than those mentioned in the memorandum. This is so that the opposite party is given notice of the objections raised.
 - However, the court may sue moto decide to take such objections as it deems fit even though they haven't been specified in the memorandum, provided the opposite party is given sufficient opportunity to contest such grounds.
 - As per Rule 3, where the memorandum is not in correct form, the court may even reject or amend the same. Where the memorandum is rejected, reasons shall be recorded by the court and where the memorandum is amended; the judge must initial or sign the same.
 - Rule 4 provides that where there is more than one person, and the decree proceeds on grounds which are common to all, the court may reserve or vary such decree in favor of all such persons.
 - This rule thus gives the court the full power to do justice to all parties even where only one of them files an appeal and not all of them are parties to such appeal.

Overview of Second Appeals under the Code of Civil Procedure, 1908

Section 100 to 103 and 108 and order XLII of CPC deals with second appeals.

S. 100. Of CPC defines about 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.

It means It may be filled only with the High Court against a decision in appeal of a court subordinate to the High Court, if the High Court is satisfied that “the case involves a substantial

question of law” but not any other ground.

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

A second appeal can be filled only in case of a decree and a decree passed ex parte in appeal may be appealed against as well.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

A second appeal shall be allowed only where the case involves a substantial question of law. The memorandum of appeal shall specifically mention such substantial question of law.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

Where the High Court is satisfied that there is a substantial question of law involved, it shall formulate such question and hear the appeal on such 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.

It means even where a particular question has not been formulated by the court, the court may hear it for reasons to be recorded where it is of the opinion that such a question is a substantial question.

Overview of Second Appeal Based on Role of Substantial Question of Law

The concept of second appeal in the Indian legal system is governed by Section 100 of the Code of Civil Procedure (CPC), 1908. A second appeal is permissible only when there is a substantial question of law involved in the case. This provision ensures that the higher judiciary is not burdened with frivolous appeals and only intervenes when there is a significant legal issue that requires resolution.

A substantial question of law is a legal issue that is essential, of great importance, and warrants judicial scrutiny. The determination of what constitutes a substantial question of law has evolved through various judicial pronouncements and depends on the specific facts and circumstances of each case. It is not defined explicitly in the CPC but is discerned through judicial interpretation. The role of a substantial question of law in admitting a second appeal is pivotal. The appellate court must be satisfied that the question is substantial, meaning it has significant implications for the parties involved and potentially for the broader legal system. The question should be open to

debate and not settled by any higher court or statute. For example, in the landmark case of *Narayan Rajendran vs. Lekshmy Sarojini* (2009) 5 SCC 264^{xi}, the Supreme Court emphasized that a substantial question of law must be one that is of general public importance or one that affects the rights of the parties substantially.

In a second appeal, the appellate court primarily focuses on the legal aspects rather than re-evaluating the factual matrix of the case. The substantial question of law acts as a filter to ensure that only cases with significant legal implications reach the higher judiciary. This helps in maintaining the efficiency and efficacy of the judicial process by avoiding unnecessary duplication of proceedings.

The distinction between the first and second appeal is crucial. In a first appeal, the appellate court re-examines both facts and law, providing a comprehensive review of the lower court's decision. However, in a second appeal, the scope is restricted to examining whether the lower courts have correctly interpreted and applied the law, based on the substantial question of law presented.

The substantial question of law serves as a cornerstone in the mechanism of second appeals, preserving the integrity of the judicial process and ensuring that only meritorious cases that raise significant legal questions are admitted for further scrutiny. This legal filter protects the appellate courts from being overwhelmed by cases that do not present substantial legal issues, thus facilitating a more focused and effective judicial review system.

Conditions and Grounds for Second Appeal

Section 101 reads as “Second appeal on no other grounds— No second appeal shall lie except on the ground mentioned in section 100.” therefore, it specifically bars the second appeal on any other ground mentioned in Section 100. The grounds on which a Second Appeal shall lie are:

- A second appeal can be filled only in case of a decree.
- It may be filled only with the High Court against a decision in appeal of a court subordinate to the High Court, if the High Court is satisfied that “the case involves a substantial question of law” but not any other ground.
- A decree passed ex parte in appeal may be appealed against as well.
- A second appeal shall be allowed only where the case involves a substantial question of law. The memorandum of appeal shall specifically mention such substantial question of law.

CASE LAW ANALYSIS ON SECOND APPEAL

1) Santosh Hazari vs. Prushottom Tiwari, 2001^{xii}: In this case the plaintiff, Santosh Hazari alleged that the defendant illegally dispossessed the plaintiff from his land possession. The court ultimately evaluated the evidence and ruled in favour of the plaintiff, affirming ownership in the suit property vested with Santosh Hazari. In the second appeal, the High Court upheld the trial court's decision, emphasizing the importance of documentary evidence and the need for a clear chain of title.

2) Hero Vinodh (minor) vs. Seshammal, AIR, 2006^{xiii}: In this case, Hero Vinodh, the appellant filed a suit for permanent prohibitory injunction against the respondent to restrain him from obstructing the construction of a compound wall on his property. The trial court and the first appellate court ruled in favour of the plaintiff. However, the defendant filed a second appeal and the High Court allowed the second appeal. The plaintiff's suit was dismissed. The appellant challenged the legality of this judgment before the Supreme Court.

3) Sarjerao vs. Sarjerao 2008(3) BOMCR 169^{iv}: Similar as the above case, the original plaintiffs filed an appeal against the judgment and decree which was pending in the Court. The suit was filed by the respondent for relief of perpetual injunction and for a declaration. But in the Court the appeal was summarily dismissed.

COMPARATIVE ANALYSIS OF FIRST AND SECOND APPEALS:

Comparative Analysis of First and Second Appeals

The Indian judicial system provides for multiple layers of appeals to ensure justice is served and errors at lower levels are corrected. The mechanisms for first and second appeals under the Code of Civil Procedure (CPC), 1908, offer parties in litigation the opportunity to challenge decisions. However, these appeals differ significantly in their scope, purpose, and judicial scrutiny. This analysis will compare first and second appeals, highlighting their distinctive features and roles within the legal framework.

Scope and Grounds for Appeal

First Appeal:

A first appeal, as provided under Section 96 of the CPC, allows a party to challenge the judgment and decree of a trial court. The appellate court in a first appeal reviews both factual and legal aspects of the case. The grounds for a first appeal can include errors in

fact-finding, misapplication of law, or procedural irregularities. Essentially, the appellate court re-evaluates the entire case, including evidence, legal interpretations, and procedural conduct.

Second Appeal:

In contrast, a second appeal under Section 100 of the CPC is limited to substantial questions of law. The appellate court does not reassess the factual matrix but focuses on whether there were significant legal errors in the judgments of the lower courts. The second appeal acts as a filter to correct substantial legal mistakes that may affect the administration of justice.

JUDICIAL REVIEW

First Appeal:

The appellate court in a first appeal undertakes a comprehensive review of the trial court's decision. This includes reassessment of evidence, witness credibility, and the application of legal principles. The court provides a detailed analysis and can overturn, modify, or affirm the lower court's decree based on its findings.

Second Appeal:

Judicial review in a second appeal is restricted to addressing substantial questions of law. The court examines whether the legal principles applied were correct and consistent with established legal precedents. The review is not about re-weighing evidence but about ensuring that the law has been correctly interpreted and applied. For instance, in *Durga Prasad vs. Banwari Lal* (2013) 4 SCC 170^{xv}, the Supreme Court emphasized that a second appeal is permissible only when there is a clear legal issue that affects the outcome of the case.

PROCEDURAL REQUIREMENTS

First Appeal:

Procedurally, filing a first appeal requires compliance with timelines and proper documentation, including the judgment and decree of the trial court. The appellant must specify the grounds of appeal and may introduce new evidence with the court's permission.

SECOND APPEAL:

Filing a second appeal involves stricter procedural requirements. The appellant must explicitly state the substantial question of law that warrants the second appeal. Without such a question, the appeal is likely to be dismissed at the preliminary stage itself. This ensures that the higher judiciary deals only with significant legal questions that merit further scrutiny.

ROLE IN JUDICIAL HIERARCHY

First Appeal:

First appeals serve as an intermediate layer of review within the judicial hierarchy. They provide an essential check on the trial courts, ensuring that both factual determinations and legal interpretations meet the required standards of justice.

Second Appeal:

Second appeals, on the other hand, serve a more specialized function within the judicial system. They focus on maintaining consistency and correctness in the interpretation of law across different cases and jurisdictions. This helps in developing a coherent body of legal principles that lower courts can follow.

KEY DIFFERENCES

1. Scope of Review:

- First Appeal: Comprehensive review of facts and law.
- Second Appeal: Limited to substantial questions of law.

2. Grounds for Appeal:

- First Appeal: Errors in fact, law, and procedure.
- Second Appeal: Only substantial legal errors.

3. Judicial Scrutiny:

- First Appeal: Detailed re-evaluation of the entire case.

- Second Appeal: Focused examination of legal principles.

4. Procedural Rigidity:

- First Appeal: Relatively flexible, may allow new evidence.
- Second Appeal: Strict, must state substantial question of law explicitly.

5. Function:

- First Appeal: Intermediate review ensuring factual and legal accuracy.
- Second Appeal: Specialized review ensuring legal consistency and correctness.

CASE REFERENCES

To illustrate the application of these principles, several landmark Supreme Court cases can be referenced:

- Narayan Rajendran vs. Lekshmy Sarojini (2009) 5 SCC 264: This case highlights the need for a substantial question of law in second appeals and sets the standard for determining what constitutes such a question.
- Durga Prasad vs. Banwari Lal (2013) 4 SCC 170: The Court reiterated that second appeals must be based on significant legal questions and not mere factual discrepancies.
- Madhukar vs. Sangram (2000) 1 LRI 1126: This case emphasizes the comprehensive nature of the first appeal, where the appellate court must reassess the entire evidence and legal arguments.
- Ram Bhajan vs. Abdul Rehman AIR 1997 P & H 120: Demonstrates the duty of the first appellate court to reconsider the trial court's evidence and reasoning thoroughly.
- Deva Ram vs. Ishwar Chand AIR 1996 SC 378: Clarifies that findings that do not result in a decree or order cannot be appealed unless they constitute a significant legal issue.

The distinction between first and second appeals is crucial for the efficiency and integrity of the judicial system. While first appeals ensure a comprehensive review of both facts and law, second appeals serve to rectify substantial legal errors, maintaining the consistency and correctness of legal principles. Understanding these differences helps in appreciating the structured approach of the Indian judiciary in providing multiple layers of scrutiny to safeguard justice.

CASE LAW ON SUBSTANTIAL QUESTION OF LAW

The test to determine whether a question is a substantial question of law or not was laid down by a Constitution Bench of the Supreme Court in **Chunnilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.** While determining the said expression occurring in Article 133(1) of the Constitution of India. The Supreme Court laid down the test as follows:

"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 is 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 pray raised is probably absurd the question would not be a substantial question of law".

Keeping in view the annexment made in 1976, a High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. A judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure cannot be sustained.

In **M.S.V. Raja v. Seeni Thevar**^{xvi}, it was held by the Supreme Court that the formulation of a substantial question of law may be inferred from the kind of questions actually considered and decided by the High Court in second appeal, even though the substantial questions of law were not specifically and separately formulated. The observations made by the Court in this regard are as follows:

"We are unable to accept the argument of the learned Senior Counsel for the appellants that the impugned judgment cannot be sustained as no substantial question of law was formulated as required under Section 100 CPC. The judgment the High Court has dealt with substantial questions of law. Whether a finding recorded by both the courts below with no evidence to support it was itself considered as a substantial question of law by the High Court. It is further stated that the other questions considered and dealt with by the learned Judge were also substantial questions of law. Having regard to the questions that were considered and decided by the High

Court, it cannot be said that substantial questions of law did not arise for consideration and they were not formulated. In this view, we do not find any merit in the argument of the learned counsel in this regard."

To determine the ratio of this Section 100 CPC, the original proposition may be stated as follows: "The judgments of High Courts in second appeals can be sustained if the judgments consider and decide substantial questions of law without formulating them specifically and separately."

Now if Prof. Wambaugh's reversal test to determine ratio decidendi is applied, the original proposition may be reversed as follows: "The judgments of High Courts in second appeals cannot be sustained if the judgments consider and decide substantial questions of law without formulating them specifically and separately".

It can be seen that the result of the decision will not be the same after the reversal of the original proposition. If the reversed proposition is applied, the appeal will be allowed. Therefore, the original proposition is the ratio of the case. It is submitted with respect that the ratio of this case is inconsistent with sub-sections (3), (4) and (5) of Section 100 CPC. This decision has the effect of diluting the provisions of Section 100 CPC. Sub-section (3) of Section 100 imposes a statutory obligation on the appellant in a second appeal to formulate the substantial question of law in the memorandum of grounds of appeal. The proviso to sub section (5) read with subsection (4) makes it clear that formulation of substantial question of law is mandatory and if any other substantial question of law arises, the same can be decided without formulating it/them. The proviso to sub-section (5) clearly negates the view taken in M.S.V. Raja case. It is respectfully submitted that the holding of the Court that "whether a finding recorded by both the courts below with no evidence to support it was itself considered as a substantial question of law by the High Court" does not pass the test laid down by the Constitution Bench of the Supreme Court in Chunnilal Mehta case. It is submitted with respect that the ratio regarding Section 100 CPC in M.S.V. Raja v. Seenilal Thevar needs reconsideration.

POLICY RECOMMENDATIONS AND CONCLUSION

Policy Recommendations and Conclusion: Substantial Question of Law in Second Appeal

Policy Recommendations

1. Clearer Legislative Definition:

To mitigate ambiguities, the legislature should provide a clearer definition of "substantial question of law" within the Code of Civil Procedure (CPC). This will assist litigants and courts in identifying what constitutes a substantial question, reducing unnecessary litigation and clarifying the grounds for second appeals.

2. Judicial Guidelines:

The Supreme Court and High Courts should develop comprehensive guidelines and illustrative examples of substantial questions of law. Such guidelines would serve as a reference for lower courts, ensuring consistent application and understanding across the judiciary.

3. Training for Judges and Lawyers:

Continuous legal education programs should be established to train judges and lawyers on the nuances of identifying substantial questions of law. This will enhance the quality of pleadings and judicial orders, reducing frivolous second appeals and ensuring only significant legal questions are brought before higher courts.

4. Strengthening Appellate Court Resources:

To handle the complexities of second appeals, appellate courts should be provided with adequate resources, including research assistants and access to extensive legal databases. This will facilitate a thorough examination of substantial questions of law and expedite the appeal process.

5. Specialized Benches for Second Appeals:

Establishing specialized benches within High Courts to deal exclusively with second appeals can ensure that substantial questions of law are addressed by judges with specific expertise. This specialization will lead to more consistent and well-reasoned judgments.

6. Revision of Appellate Procedures:

Revising the procedures for second appeals to include a preliminary hearing on the substantial question of law can filter out cases lacking merit. This step would ensure that only appeals with genuine legal significance proceed further, saving judicial time

and resources.

The role of substantial questions of law in admitting second appeals is a critical aspect of the Indian judicial system. It serves as a filter to ensure that only significant legal issues reach the higher echelons of the judiciary, thereby maintaining the quality and consistency of judicial decisions. The current legal framework, while effective, can benefit from certain policy enhancements to streamline the process and reduce ambiguities.

A clearer legislative definition of substantial questions of law, coupled with judicial guidelines, will provide much-needed clarity and uniformity in the application of Section 100 of the CPC. Training programs for judges and lawyers will further ensure that only genuine substantial questions are brought before the courts, enhancing the efficiency of the judicial process.

Moreover, strengthening the resources and case management capabilities of appellate courts will enable them to handle the complexities of second appeals more effectively. Establishing specialized benches and revising appellate procedures will ensure that substantial questions of law are given the focused attention they deserve.

In conclusion, addressing substantial questions of law through a robust and clear framework will not only improve the efficiency of second appeals but also uphold the integrity and reliability of the Indian judicial system. By implementing these policy recommendations, the judiciary can ensure that justice is served promptly and effectively, maintaining public confidence in the legal process.

CASE REFERENCE

ⁱ Chunnilal v. Mehta vs. Century spinning & manufacturing, 1962 AIR 1314, 1962 SCR SUPL. (3) 549

ⁱⁱ Nazir Mohamed vs. Kamala & Ors, AIR 2020 SUPREME COURT 4321, AIRONLINE 2020 SC 715

ⁱⁱⁱ Raghunath Pratap Singh vs. deputy commissioner pratapgarh, 1927

^{iv} SBI vs. S.N. Goel, 2000

^v Madhukar v. Sangram (2000) 1 2 LRI 1126

^{vi} Ram Bhajan v. Abdul Rehman AIR 1997 P & H 120

^{vii} Deva Ram v. Ishwar Chand AIR 1996 SC 378

^{viii} The State Of Andhra Pradesh, vs Kothacheruvu Plantations and Ors. AIR 1994 AP 16

^{ix} Mahesh Chand Sharma v. Raj Kumari Sharma AIR 1996 SC 869, (1996) 8 SCC 128

^x FCI v. Williamson Major & Co, AIR 1999 Cal 219 (DB)

^{xi} Narayan Rajendran vs. Lekshmy Sarojini (2009) 5 SCC 264

^{xii} Santosh Hazari vs. Prushottom Tiwari, 2001

^{xiii} Hero Vinodh (minor) vs. Seshammal, AIR, 2006

^{xiv} Sarjerao vs. Serjerao 2008(3) BOMCR169

^{xv} Durga Prasad vs. Banwari Lal (2013) 4 SCC 170

^{xvi} M.S.V. Raja v. Seeni Thevar

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