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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 16, 2010

Date of Order: April 21, 2010

+ R.S.A. No. 12/2010 & CM Appl. No. 1023-1024/2010

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21.04.2010

MODIPON LTD.

...Petitioners

Through: Mr. A.S. Chandhiok & Mr. Sandeep Sethi, Sr. Advocates with Mr. Rajesh Yadav, Mr. Gautam Kaitan & Ms Bharti Badesra, Advocates

Versus

ARUNA KOHLI & ANR

...Respondents

Through: Mr. Rajiv Sawhney, Senior Advocate with Mr. Anshul Tyagi & Mr. L.K. Singh, Advocates for R-1
Mr. Sanjeev Sindhvani & Ms Ekta Kalra, Advs. for R-2.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This second appeal has been filed under section 100 of CPC wherein the appellant raised 24 questions of law (A to X) terming them as substantial questions of law. The first question reads as under:

“Whether the judgment of the trial court is a nullity as it has failed to deal, discuss, answer and decide the most important issue, which goes to the root of the matter, in view of the requirement of Order 20 Rules 4&5 and Order 14 Rule 2 CPC which mandate the trial Court to return findings on all the issues?”

and there are 23 other similar questions of law. The questions raised show that the appeal was filed in casual manner raising any question and terming it as a substantial question of law.

2. During arguments the learned Sr. Counsel for appellant submitted following 12 questions of law for consideration of court and stated that these were the substantial questions of law being raised:

“(1) Whether two separate premises, having two distinct municipal numbers, one being a leased premises and other being a licensed premises, created by the two different documents, and always treated as two different premises, can be held to be one premises/ one tenancy?

(2) Whether a Court is justified in passing a decree of possession of two separate premises bearing two separate municipal numbers merely because the two premises are adjacent to each other and return in finding that the parties treated the two premises jointly as one tenancy, although the specific case pleaded was tenancy qua one premises and license qua another ?

(3) Whether the landlord can serve a notice under section 106 of the TP Act, without withdrawing his first suit, based on the averments that the defendant was a licensee and now in unauthorized occupation and continues to be pending till date?

(4) Can a plaintiff plead the tenancy is only an alternative plea, and take two inconsistent stands in a subsequent suit and the alleged notice in any case is given a go by?

(5) Whether a notice of termination of tenancy, can be issued under instructions of only one co-owner, without any ratification by the other co-owner?

(6) Whether the impugned judgment is sustainable in Law in the absence of any finding on the vital question that the fact finding inquiry for the lost documents i.e. the AD cards is still pending and the trial Court in its order dated 06.12.2007 recorded that the said inquiry is of vital importance for the disposal of the suit?

(7) Whether the testimony of a sole witness (PW-1), in the absence of any authority/attorney of the Plaintiffs in his favour, can be treated as that of a recognized agent under Order 3 Rule 1 & 2 CPC, competent to appear and dispose on the behalf of the Plaintiffs?

(8) *Whether a judgment can be based or relied on an alleged admission in the pleadings of previous litigations between the parties, without the and pleading being placed on record and/or proving them in accordance with law and the Appellant being confronted thereto?*

(9) *Whether the findings of the First Appellate Court that the unregistered and unstamped lease deed cannot be considered in evidence, is against the principles laid down by the Hon'ble Supreme Court (by a Constitution Bench) reported in (1962) 2 SCR 333 "Javer Chand vs. Pukhraj Surana", wherein it has been held that once the Court, rightly or wrongly decided to admit the document in evidence, so far as the parties are concerned, the matter stand closed?*

(10) *Whether the appellate Court is correct in Law in not examining and not recording any finding on the issues framed and decided by the Trial Court, instead framing new question and recording its findings?*

(11) *Duty of the Court is to see if a suit based on tenancy and license could be joined together in one suit and if the answer is in affirmative, how the suit would be valued for jurisdiction and Court Fees?*

(12) *What is a jurisdiction qua subject matter of the suit and duty of the Hon'ble Court?"*

3. In order to appreciate whether any substantial question of law arises or is raised, it would be necessary to have a brief resume of the facts.

4. By an agreement (Ex.PW1/D1), a portion of premises No. 13, Amrita Shergill Marg, New Delhi, measuring 2900 sq. yards was let out to the appellant with effect from 1st March, 1977. Later on by a letter dated 28th May, 1977, the appellant was permitted to use 600 sq. yards of the same premises as a licensee. The letter specified that this area was being allowed to be used by appellant on its requests and it was being permitted to use the area on nominal license fee of Re.1/-. Thus, the total area of the premises in use and occupation of the appellant was 3500 sq. yards.

5. The respondent landlord wanted the appellant to vacate the premises which the appellant was not prepared to do. Since prior to 1988 Delhi Rent Control Act was

applicable, the landlord filed eviction petitions against the appellant under Delhi Rent Control Act under section 14 (1) (e) and 14 (1) (k). In reply to these petitions, the appellant took a stand that he was not licensee in regard to 600 sq. yards of land. He was a tenant in respect of entire 3500 square yards of area with building thereon. On appellant taking this stand that he was a tenant in respect of entire area of 3500 sq. yards of land along with construction thereon, the respondent vide notice dated 27th February, 1989 i.e. after the amendment in Delhi Rent Control Act came into force, terminated the tenancy of the appellant and filed a suit for possession and mesne profits. The respondent withdrew eviction petitions under DRC Act and the same were dismissed as withdrawn. In the suit for possession, the respondent categorically stated that initially area of 2900 sq. yards was let out vide unregistered lease deed and later on 600 sq. yards of area was allowed to be used. However, since the appellant had taken the stand that he was a tenant in respect of entire area, the suit was being filed in respect of entire area of land treating it as a tenant without entering into controversy whether the appellant was a licensee or not.

6. Respondent had also filed a suit being suit No. 1121 of 1983 in Delhi High Court against the appellant wherein in the Written Statement, the appellant had taken following stand regarding the use and enjoyment of 600 sq. yards of area.

“In regard to the area of land measuring about 600 sq. yards., although the letter dated 28th May, 1977 labelled the grant as a licence it was in fact intended to be enjoyed and has in fact been enjoyed as a part and parcel of the leased premises. The same cannot be segregated from the other premise and the suit in respect thereof is not maintainable. “

In para 7 of the written statement, the appellant had again taken stand as under:

“Contents of para 7 of the plaint are not admitted as stated. It is denied that the Defendant made any request to the plaintiffs about the 600 sq. yds. Piece of land in May, 1977. In fact the entire

tenanted premises including about 600 sq. yds. Area was handed over by the plaintiffs to the defendant in January, 1977 itself at the time of the execution of the agreement dated 10th January, 1977. The entire planning for construction, and additions and alterations since the very inception of the tenancy was made with respect to the entire area of about 3,500 sq. yards by the defendant. It appears that the Plaintiffs wrote their letter dated 28.5.1977 with some ulterior motives inter-alia with a view to mislead the government and urban ceiling authorities. In fact the Defendant as well as the Plaintiffs have throughout acted on the tenancy premises in occupation of the Defendant. That is why the Plaintiffs, through Plaintiff No. 3, have submitted plans with the NDMC for the proposed construction of a room in a part of the said area of about 600 sq. yards without ever treating the said area differently.”

Similarly, in suit No. 517 of 1995, before the District Judge, Delhi, titled as “*Pushpa Guglani Vs. Modipon Limited*”, an application was made by the appellant (defendant) under Order VI Rule 17 of CPC. The appellant made following assertions in paragraphs No. 4 and 5 of the said application:

“(4) That there has been a long and multifarious litigation between the parties prior to the present suit. The case of the Plaintiffs always has been that the Defendant is a tenant only with respect to Property comprising of land admeasuring 2900 sq. yards and that the Defendant has no tenancy rights with respect to the 600 sq. yds. of land forming subject matter of aforesaid letter dated 28th May, 1977 supra. However, the factum of the existence of the documents aforesaid has not been disputed by either of the parties. While the Plaintiffs were claiming that the Defendant is a Licensee with respect to the said 600 sq. yds. of land, the claim of the Defendant was that it was a tenant with respect to the said portion of land also.

(5) That the Plaintiffs have, prior to the filing of the present

suit, also filed a suit in the High Court of Delhi against the Defendant being Suit No. 1121 of 1983 on the file of the High Court of Delhi and reference thereto has already been made in the pleading of the parties. In the said Suit the Plaintiffs have inter alia claimed a decree for possession of the said 600 sq. yds. of land and a decree for mandatory injunction to direct this Defendant to demolish all the constructions alleged to have been made unauthorisedly in the property including over the said 600 sq. yds. of land. The plea of the Defendant in the Written Statement in the said Suit also is that it is a tenant with respect to the said 600 sq. yds. of land and on the pleadings of the parties one of the Issues framed in the said Suit is as under:

“Whether the portion A B C D E F A in the Plan annexed to the Plaint was comprised in the tenancy of the Defendant No. 1? If so, what is the effect thereof on the maintainability of this Suit?””

7. The appellant had also filed a suit in the court of District Judge being suit No. 64 of 1980 titled as “*Modipon Ltd. Vs. Pushpa Guglani and Ors.*” wherein it was specifically asserted as under :

“That vide the agreement of lease dated 10th January, 1977 the plaintiffs acquired from defendants 1 to 3 the possession and tenancy with respect to the entire premises consisting of the entire building bearing No. 13, Ratendon Road (now known as Amrita Shergill Marg) New Delhi comprising of a portion of the plot of land measuring 2900 sq yards (approximately) on a rental of Rs. 7000/- per month, in accordance with the terms and conditions detailed in the agreement of lease dated 10th January, 1977. Some of the main terms and conditions of the tenancy are as under:

- a) That the tenancy commences from 1st March, 1977 on a rental of Rs. 7,000/- per month.*
- b) That the rent was payable to the landlords/landladies on or before 7th day of each month.”*

8. Thus, the stand of the appellant all along had been that the appellant was tenant in

respect of entire area of 3500 sq. yards of land which constituted the premises of which the suit was filed. As a defence to the suit filed by respondent (plaintiff) for possession and mesne profits, the appellant, however, took the plea that there were two tenancies in respect of suit premises, one in respect of 2900 sq. yards, and the other in respect of 600 sq. yards. A plea of licence in respect of 600 sq. yards was also taken. The appellant assailed the validity of termination of notice and also took a plea that the lease created was a perpetual lease which could not be terminated. Since the respondent had initially filed a suit in the High Court in respect of 600 sq. yards of land which respondent withdrew after filing a suit for possession in respect of entire area of land, a plea that the suit was liable to be stayed under section 10 of CPC was also taken. Issues arising out of the pleadings were framed by the Trial Court and after appreciating the evidence, suit was decreed by the Trial Court vide judgment dated 15th February, 2008. In 76 pages of its judgment, the Trial Court discussed, analysed all the pleas raised by the appellant in context of the evidence adduced before the Trial Court and in context of the law cited.

9. In First Appeal preferred by the appellant, the appellant had assailed the order of Trial Court on numerous grounds including that there were two separate tenancies created in favour of the appellant by the respondent and the two tenancies could not be terminated by one single notice and the suit could not be filed in respect of two tenancies. A plea was also raised that Trial Court had not dealt with additional issue No. 3(a) framed by the it concerning two tenancies. Plea of perpetual lease deed was also raised. The first Appellate Court looked into all these pleas and went through entire evidence again and after re-appreciating the entire evidence, upheld the order of the Trial Court.

10. The first appeal is a matter of right of a litigant and in the first appeal, the court is supposed to re-appreciate the entire evidence in the light of the arguments of the appellant and the First Appellate Court can substitute its own findings of facts and findings of law,

on being convinced that the order of the Trial Court was not in accordance with law or the findings of facts were not based on the evidence. However, the Second Appeal cannot be entertained in a casual manner. The policy of legislature is that there should be rest to the litigation and Second Appeal should not be entertained unless a substantial question of law is raised by the appellant and framed by the Court. In ***State Bank of India & Ors vs. S.N. Goyal (2008) 8 SCC 92***, the Hon'ble Supreme Court laid down as to what was the substantial question of law in the following words:

“Second Appeals would lie in cases which involve substantial questions of law. The word “substantial” prefixed to “question of law” does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. “Substantial question of law” means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of Section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this Court (or by the High Court concerned so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed

or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the High Court concerned), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the High Court concerned) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this Court (or the High Court concerned) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two viewpoints, it can be said that a substantial question of law arises or consideration. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.”

11. It is also a settled law that in Second Appeal the High Court cannot set aside concurrent findings of facts given by the courts below, and can entertain an appeal only if the appeal raises a substantial question of law. In ***Veerayee Ammal Vs. Seenii Ammal; (2002) 1 SCC 134***, the Hon’ble Supreme Court observed that amending Act of CPC was introduced on the basis of various Law Commission reports with an intention to minimize litigation and to give litigant a fair trial in accordance with the accepted principles of natural justice, to expedite the disposal of civil suits and proceedings so that justice is not delayed. The Hon’ble Supreme Court observed that it has noticed with distress that despite amendment, the provisions of Section 100 of the CPC were not being clearly

followed and amendment was substantially being ignored or generously applied by some judges of the High Courts with the result that objective intended to be achieved by the amendment of Section 100 appeared to have been frustrated. The Hon'ble Supreme Court in the above case observed as under;

*“8. To the same effect are the judgments reported in **Sinha Ramanuja jeer v. Ranga Ramanuja jeer, V. Ramachandra Ayyar V. Ramalingam Chettiar and Madamanchi Ramappa v. muthaluru Bojjappa**. After its amendment, this Court in various judgments held that the existence of the substantial question of law is a condition precedent for the High Court to assume jurisdiction of entertaining the second appeal. The conditions specified in Section 100 of the Code are required to be strictly fulfilled and that the second appeal cannot be decided on merely equitable grounds. As to what is the substantial question of law, this Court in **Sir Chunilal v. Mehta & Sons Ltd. v. Century Spinning & Manufacturing Co.Ltd. [AIR 1962 SC 1314]** held that: "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 or 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."*

9. In Kondiba Dagadu Kadam v. Savitribai Sopan Gujar

*& Ors. [JT 1999 (3) SC 163] this Court again considered this aspect of the matter and held: "If the question of law termed as substantial question stands already decided by a large 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 facts of the case would not be termed to be a 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 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 document cannot be held to be raising a substantial question of law. But where it is found that the appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as 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 procedure requiring interference in second appeal. This Court in **Reserve Bank of India & Anr. v. Ramakrishna Govind Morey (AIR 1976 SC 830)** held that whether trial court should not have exercised its jurisdiction differently is not a question of law justifying interference."*

In the light of the law laid down by the Hon'ble Supreme Court it has to be considered whether any substantial question of law is raised by the appellate who wants this Court to entertain Second Appeal.

12. The first question raised is in respect of two tenancies. This question is not a question of law. It is a question of fact whether there were two tenancies or one tenancy

and the two courts below have held that it was one tenancy and it is appellant's own admission available on various documents & pleadings that it was one tenancy. The appellant cannot be permitted to approbate and reprobate according to his convenience. The admissions made by the appellant in the pleadings before the court of law, not in one forum but before various forums, were sufficient to come to conclusion that it was one tenancy and a concurrent finding of fact has been given by two courts below. This finding is based on cogent evidence and this court cannot interfere in these findings in Second Appeal. Second question is again in respect of the same issue. Merely because two separate municipal numbers 13 and 13A have been assigned does not divide the tenancy which the appellant has been alleging to be one and one only. Thus the second question of law raised during arguments is also not a question of law and it is a question of fact whether there was one tenancy or two tenancies and once the court has come to conclusion that it was one tenancy, a decree can be passed. The third question raised about the notice is also not a question of law. The appellant has failed to point out if there was a pre-condition provided under section 106 of TP Act that a notice cannot be served without withdrawing a suit, I find that this question was also not a question of law. Question No. 4 is also not a question of law. In fact, it is appellant himself who had taken a stand in various litigations that it was not a licensee but a tenant and it was one tenancy. In view of this stand of the appellant, instead of entering into unnecessary controversy of lease and license, the landlord had a liberty to go by the admission of the appellant and to file a suit on the basis of what appellant had alleged in the pleadings before the other Court.

13. The next question about notice being issued only by one co-owner without ratification by another co-owner also is not a question of law or substantial question of law. This question has been squarely dealt with by the two courts below and has been

answered. This is not a substantial question of law. Question no. 6 is also no question in the eyes of law. Pendency of an inquiry regarding loss of AD cards could not have stood in the way of deciding a suit neither it raises any question of law. The 7th question raised regarding the testimony of a sole witness is also no question of law. It is settled law that any person who has knowledge of the facts of the case can appear as a witness in the case and can testify and depose in the court as to what he knows about the facts of the case. A witness does not need any authority from anyone to appear in the court to testify. There are rules laid down by Evidence Act on admissibility and non-admissibility of the evidence. The deposition of a witness & admissibility and non admissibility of evidence is done on the basis of rules laid down in the Evidence Act. Apart from it there is no law requiring a witness to have authority or attorney to appear as a witness. The court has to appreciate the evidence brought on record by the parties and give weightage to the evidence as per law. It is not a question of law whether a sole witness's testimony is reliable or not or a witness can appear in the court and depose on behalf of plaintiff or not. Whosoever appears as a witness, his testimony is to be considered by the court on the yardsticks of Evidence Act. If a witness is not competent to prove a fact, court can consider such fact not proved, if a witness deposes on hearsay basis about some fact, court can refuse to believe existence of such fact, but court cannot say that a person aware of the facts of the case cannot appear in court for want of some power of attorney or authority. Authority is needed to represent a party in the court & not to appear as a witness for the party. Next question raised by the appellant is about the admissions made by the appellant and reliance placed by the Trial Court on such admissions. It has not been argued by counsel for the appellant that any of the pleadings referred to by the Trial Court or by the respondent were actually not filed by the appellant or the paragraphs reproduced were not from the pleadings of the appellant. An admission made by the

appellant in other litigation is a relevant piece of evidence and every court is bound to consider such admissions as evidence. Even during this argument on admission of this appeal, it has not been the case of the appellant that admissions made in previous litigations were wrongly re-produced or were actually not made. A court can always take judicial notice of the court records. Formal proof of public documents and court record is not necessary, unless controverted. The certified copies of the pleadings of the parties in one case can be looked into by the court in another case. Next question raised (9th question) is also not a substantial question of law. From 1962 till 2009, the courts in India have travelled a long distance in law. The two courts below have analyzed and considered the judgment cited by the appellant – **(1962) 2 SCR 333; Javer Chand vs. Pukhraj Surana** and rightly relied upon the latest judgment of SC regarding the evidential value of unregistered and unstamped lease deed. I find no question of law much less substantial question of law being raised.

14. Question No. 10 in para raised by the appellant is again no question of law. The first appellate court had re-produced the relevant paragraph wherein the Civil Judge had considered Issue No. 3(a) and answered Issue No. 3(a). It is correct that while enumerating various issues to be decided one by one, no heading of Issue No. 3(a) finds mentioned in the Trial Court judgment, but, this issue has been specifically dealt with by the Trial Court and this argument was rejected by the First Appellate Court that this issue has not been dealt with. A perusal of the judgment of the Trial Court and First Appellate Court show that Issue No. 3(a) has been answered by the Trial Court and the judgment was not given without recording findings on this issue.

15. Other questions mentioned by appellant are also not substantial question of law. It has been consistently the stand of the appellant that it was one tenancy. The respondent filed the suit, because of this stand of the appellant that the entire premises was under the

tenancy of the appellant as one on monthly rent of Rs. 7,000/-. No question could therefore be raised about suit based on license being joined with the suit based on lease. The suit was based on appellant's admission that it was a tenant in respect of entire premises and it was one tenancy. Question No. 12 raised is also no question of law.

16. I consider that this appeal raises no substantial question of law and the appeal is liable to be dismissed and is hereby dismissed. No orders as to cost.

April 21, 2010
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SHIV NARAYAN DHINGRA J.