

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAS] No.628 of 2021
in
Second Appeal No.357 of 2018

Ghanshyam Budhaji Khobragade & others
vs.
Shrawan Sambhaji Katkar & others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Ms. R.S. Thakre h/f Shri A.H. Lohiya, Advocate for the Appellants.
Shri M. Anilkumar, Advocate for Respondent No.1.
Shri Raja Dandwate h/f Shri M.P. Khajanchi, Advocate for Respondent Nos.2 & 3.

CORAM : S.M. MODAK, J.
DATE : 29th SEPTEMBER, 2021.

Heard the learned Advocates for the respective parties.

02] It is true that while issuing notice on 30/10/2018, this Court has framed one substantial question of law. It deals with appreciation of evidence by the first appellate Court on the point of proof of readiness and willingness on the part of the plaintiff. After hearing the parties at great length on 26/08/2021, this Court was pleased to admit the appeal on that substantial question of law.

03] Now the appellants-subsequent purchasers want this additional substantial question of law to be framed. Learned Advocate Shri Anilkumar for respondent No.1-original plaintiff requested to keep this application pending and it be decided along with the appeal. He made this submission because he is interested in early disposal of the appeal than to prolong the hearing. He has also expressed a fear that on this reason or that reason, the appellants may prolong the hearing of the appeal.

04] The learned Advocate appearing for respondent Nos. 2 & 3-original defendants supported the prayer made in the application.

05] As contemplated in proviso to sub-section 5 of Section 100 of the Code of Civil Procedure, the Court can also frame additional substantial question of law by giving reasons.

06] When the points framed by the first appellate Court are perused, apart from the necessary ingredients of readiness and willingness, a point as to entitlement of the plaintiff for specific performance has also been framed. My attention is invited to Section 20 of the Specific Relief Act. The trial Court has also framed a point as to entitlement of the plaintiff for specific performance.

07] Merely because the Courts below have framed a particular point, it does not mean that this Court is bound to frame substantial question of law. It can be framed only when the situation warrants. In paragraph 1(c) of the memo of appeal, the appellants have suggested a substantial question of law about the discretion exercised by the first appellate Court in favour of the plaintiff and an error in that, particularly when the trial Court had chosen not to exercise that discretion in favour of the plaintiff.

08] For the above discussion, this Court is inclined to frame that substantial question of law. Because, if it is framed, the parties are put to notice about the substantial question of law, on which they are supposed to argue the appeal. So, by merely postponing the application till final disposal of the appeal will not meet the ends of justice. In view of that, the following additional substantial question of law is framed :

- i. Whether the first appellate Court has committed an error in exercising the discretion vested under Section 20 of the Specific Relief Act, in favour of the plaintiff?*

The application is allowed and disposed of accordingly.
The matter be kept for final argument on 13th October, 2021.

**sandesh*

JUDGE