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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.07.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

S.A.No.488 of 2021  
and  
CMP.No.9379 of 2021

P.Piarajohn  
S/o.Peerjohn Sahib .. Appellant/Appellant/Defendant

Vs.

P.Ramu  
S/o.Paramasivam .. Respondent/Respondent/Plaintiff

Prayer: Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree of the Sub-Judge at Uthangarai dated 30.09.2019 made in AS.No.11 of 2018, confirming the Judgement and Decree of the District Munsif-cum-Judicial Magistrate at Pochampalli dated 22.12.2017 made in O.S.No.91 of 2013.

For Appellant : Mr.A.Manikandan

J U D G M E N T

Captioned second appeal arises out of a suit on a promissory note.

2. Mr.A.Manikandan, learned counsel on record for the appellant in captioned Second Appeal brought to the notice of this Court that there were five promissory notes in all leading to five suits between same parties. Three Second Appeals being S.A.Nos.372 of 2021, 374 of 2021 and 455 of 2021 were dismissed on 16.04.2021, 17.04.2021 and 22.06.2021 respectively.

3. Learned counsel submits that sole respondent herein filed a suit in OS.No.91 of 2013 before 'District Munsif-cum-Judicial Magistrate, Pochampalli' ['trial Court' for brevity]. This suit was resisted on several pleadings, but after full contest, it was decreed vide judgment and decree dated 22.12.2017. It is also submitted that this was carried in appeal by way of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' [hereinafter 'CPC' for brevity] to the 'Subordinate Judge's Court, Uthangarai' ['First Appellate







'substantial question of law' occurring in Section 100 of CPC means. The expression 'substantial question of law' occurring in Section 100 of CPC has not been defined in CPC, but it was described elucidatively by a Hon'ble Full Bench of this Court in Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju And Others reported in AIR 1951 Madras 969 (FB)]. This Rimmalapudi Subba Rao's principle was subsequently set out with affirmation by Hon'ble Supreme Court in the celebrated judgement i.e., Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd., reported in AIR 1962 SC 1314. To be noted, Chunilal V.Mehta's case was rendered by a Constitution Bench of Supreme Court, it is therefore declaration of law, relevant paragraph is Paragraph No.6 and the same reads as follows:

'6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. 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 plea raised is palpably absurd the question would not be a substantial question of law.'

10. This Rimmalapudi Subba Rao case which elucidatively describes the expression substantial question of law as affirmed by Hon'ble Supreme Court in Chunilal's Mehta's case has been neatly and nicely captured in Santosh Hazari case [Santosh Hazari Vs. Purushottam Tiwari (deceased) by Lrs., reported in (2001) 3 SCC 179], relevant paragraph is paragraph 12 and the same reads as follows:

'12. 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 contradistinction with - technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the



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scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other 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 : 55 IA 235], the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question 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 Spg. and Mfg. 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 Veeraju* [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

"[W]hen 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 the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

"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 plea raised



is palpably absurd the question would not be a substantial question of law.''

11. This Court has no difficulty in coming to the conclusion that no substantial question of law arises in the captioned Second Appeal owing to the facts, trajectory, contentions captured supra as nothing debatable, res integra or disregarding of settled principles arise. Therefore, this Court deems it appropriate to dismiss the captioned Second Appeal at the admission stage by holding that no substantial question of law arises. Accordingly, this second appeal is dismissed. Owing to the nature of the matter and the submissions made before this Court, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mk/vvk

To

1. The Subordinate Judge,  
Uthangarai.
2. The District Munsif-cum-Judicial Magistrate,  
Pochampalli.

S.A.No.488 of 2021  
and CMP.No.9379 of 2021

PMK (CO)  
B.VC (08/10/2021)