



\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 1/2025**

SANJEEV SHARMA

.....Appellant

Through: Mr.Nishant R.Katneshwarkar,
Ms.Anisha Mathur, Mr.Rahul Kumar,
Ms.Himani Kalra, Mr.Anirudh Pandit,
Mr.Shivam Baghel and Mr.Kartik
Sharma, Advocates

versus

ALKA AGGARWAL & ANR.

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

09.01.2025

%

CM APPLs. 715-17/2025 (Exemptions)

Exemptions allowed subject to just exceptions.

The applications stand disposed of.

RSA 1/2025

1. The instant regular second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed on behalf of the appellant challenging the judgment dated 16.12.2024 passed by the learned District Judge-06 Central District, Tis Hazari Courts, Delhi, in RCA DJ NO. 156 of 2022, whereby the appeal filed against the judgment and decree dated 05.07.2022, order dated 16.07.2022 and order dated 30.03.2022 passed by Ld. Civil Judge -06 (Central), Tis Hazari Court, was dismissed.
2. The brief facts of the case are that a suit for eviction was filed by the



landlady-respondent against the appellant alleging therein that the appellant, who was initially a tenant under a rent agreement dated 16.10.2019, had violated the terms of tenancy, failed to vacate the premises despite termination of the tenancy through a legal notice dated 17.02.2021, and had colluded with others to illegally retain possession of the suit property.

3. The said suit was taken up for hearing on 05.07.2022, on which date while entertaining an application under Order XII Rule 6 of the CPC, the Court passed a decree directing the appellant or his agents, servants, employees, associates, assignees, successors, representatives etc. or anyone acting on behalf of the appellant herein to handover the peaceful and vacant possession of the suit property.
4. Learned counsel for the appellant, on instructions, submitted that the appellant was the tenant of the suit property and that the respondent-landlady filed the suit against the appellant and his wife, Ms. Meenu Sharma. It is further submitted that a matrimonial dispute between the appellant and his wife is ongoing. Although, Ms. Meenu Sharma initially filed written submissions in the suit, she subsequently chose not to pursue the matter. However, it is an admitted fact that the appellant was the tenant of the suit property.
5. The perusal of the order dated 05.07.2022 indicates that the decree was passed on the basis of admission made by the appellant. The appeal filed against the impugned order was taken up by the learned District Judge, whereby, he also noted that the appellant had agreed to vacate the premises and to handover the peaceful possession of the same. It was also noted that the learned Trial Court has also passed an



order on the application under Order XXXIX Rule 10 CPC, thereby, directing the tenant to pay the admitted rent at the rate of Rs.24,000/- w.e.f. April 2021 until the disposal of the suit or vacation of the suit premises, whichever is earlier.

6. The learned Appellate Court dealt with the averments of the appellant and noted that the possession of the suit property had already been handed over to the respondent. The only point of contention raised was that the wife of the appellant was in possession and therefore, the learned Trial Court had, in passing the decree against the appellant i.e. defendant No.1 had directed the appellant or his agents, servants, employees, associates, assignees, successors, representatives etc. or anyone acting on behalf of the appellant herein to handover the peaceful and vacant possession of the suit property. The learned Appellate Court noted the inter-se dispute between the parties and *inter alia*, held that there was no illegality or infirmity in the order passed by the learned Trial Court and the appeal got dismissed.

7. Section 100 of CPC reads as under:

“100. 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.

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

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

(4) Where the High Court is satisfied that a substantial



question of law is involved in any case, it shall formulate that 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.]”

8. Bare perusal of the above indicates that an appeal shall lie to the High Court from any decree passed in appeal by a subordinate court if the High Court is satisfied that the case involves a substantial question of law. “Substantial questions 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. The Supreme Court in the case of ***State Bank of India & Ors. Vs. S.N.Goyal*** (2008) 8 SCC 92, *inter alia*, held as under:

"14. We may next refer to the procedure relating to second appeals as evident from Section 100 read with Order 42 Rules 1 and 2 of the Code of Civil Procedure:

(a) The appellant should set out in the memorandum of



appeal the substantial questions of law involved in the appeal.

(b) The High Court should entertain the second appeal only if it is satisfied that the case involves a substantial question of law.

(c) While admitting or entertaining the second appeal, the High Court should formulate the substantial questions of law involved in the case.

(d) The second appeal shall be heard on the question(s) of law so formulated and the respondent can submit at the hearing that the second appeal does not in fact involve any such questions of law. The appellant cannot urge any other ground other than the substantial question of law without the leave of the Court.

(e) The High Court is at liberty to reformulate the substantial questions of law or frame other substantial question of law, for reasons to be recorded and hear the parties on such reformulated or additional substantial questions of law.

15. It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts.

Some of the oft-repeated errors are:

- (a) Admitting a second appeal when it does not give rise to a substantial question of law*
- (b) Admitting second appeals without formulating substantial question of law.*
- (c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference" as the substantial question of law.*
- (d) Failing to consider and formulate relevant and appropriate substantial questions) of law involved in the second appeal.*
- (e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.*
- (f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make*



*submissions on the reformulated substantial question of law.
(g) Deciding second appeals by reappreciating evidence and interfering with findings of fact, ignoring the questions of law.*

These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this Court and remands by this Court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving 'substantial questions of law are not rejected as not involving substantial questions of law''

9. Furthermore, it is no longer *res integra* that the interference with concurrent findings of the Courts below must be avoided under Section 100 of the CPC unless warranted by compelling reasons. In any case, this Court during the second appeal cannot appreciate the evidence afresh and substitute its own opinion merely because an alternative view is possible.
10. In view of the discussion above this court considers that there is no question of substantial law has been brought forward by the appellant on the basis of which present appeal can be admitted. It has to be kept in mind that this court while entertaining second appeal in the case of concurrent finding of two courts, cannot enter into the appraisal or re-appreciation of facts. Hence, the present appeal along with pending application is dismissed.

DINESH KUMAR SHARMA, J

JANUARY 9, 2025

Dy/smg..