2025 INSC 169

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP(C) NO.16423 of 2021)

VIPIN KUMAR ... Appellant

VERSUS

JAYDEEP & OTHERS ... Respondents

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. Being aggrieved by the order dated 05.01.2021 passed by the High Court of Uttarakhand in MCC No.12090 of 2021 by which the application seeking recall of the order dated 11.10.2019 (passed in Review Application No.708/2019 which was filed in S.A. No.140/2016 which appeal was allowed by order dated 01.07.2019) was rejected, the appellant has preferred this appeal.

3. Briefly stated the facts of the case are as under. For the sake of convenience, the parties are referred to in terms of their status and position before the Trial Court while narrating the facts. However, they have also been referred to as appellant (defendant no.3); respondent no.1 (plaintiff); respondent no.2 (defendant no.1); respondent no.3 (Union of India); and, respondent no.4. (Tehsildar).

The plaintiff is stated to be a permanent resident of Village Fakarhedi, Tejupur. Defendant No.1, through a daily newspaper *Amar Ujala* dated 21.01.2011 invited applications for the appointment of a Rajiv Gandhi Rural LPG distributor for Village Chudiyala, Tejupur, Tehsil Roorkee, District Haridwar, in the State of Uttarakhand. The application stated that the applicants who met the conditions mentioned in the advertisement could submit their applications by 23.02.2011. The eligibility criteria for the appointment of a Rajiv Gandhi Rural LPG distributor were outlined in paragraph 4 of the advertisement. According to Condition No.4(Kha), the applicant must: 1. be a permanent resident of the notified Nyaya Panchayat of Chudiyala, Village

Tejupur; 2. be an Indian citizen; 3. have completed at least 10th-grade education; 4. fulfill norms for multiple dealerships/ distributorships; and 5. possess a 20x24-meter plot of land in their ownership, suitable for construction as per RGGLV Cylinder rules.

4. The plaintiff contended that Defendant No.3, who is neither a resident of the notified village nor the Nyaya Panchayat, was appointed despite being a permanent resident of Village Sherpur, Shahpur, District Saharanpur, in the State of Uttar Pradesh. The plaintiff alleged that the appointment of Defendant No.3 was made on the basis of an illegal and fake domicile certificate. On 17.11.2011, the plaintiff raised objections to Defendant No.1 claiming that the domicile certificate submitted by Defendant No.3 was fraudulent. In support of his arguments, the plaintiff produced a document obtained from the Tehsildar of Roorkee confirming that no domicile certificate had been issued to Defendant No.3 by that office. It is alleged that despite this, Defendant No.1 ignored the objection and appointed Defendant No. 3 as the gas distributor.

5. The plaintiff further averred that the plaintiff had fulfilled all the eligibility criteria set by Defendant Nos.1 and 2 for the appointment of a gas distributor but was not considered for the position. The plaintiff submitted an application with evidence to Defendant No.1 on 17.11.2011, requesting the cancellation of Defendant No. 3's appointment.

6. It was further averred that under the Right to Information Act, the plaintiff sought information about the domicile certificate of Defendant No.3. On 17.02.2012, the Nayab Tehsildar of Roorkee, acting as the Public Information Officer, confirmed that no such domicile certificate had been issued by Tehsil Roorkee. However, Defendant No.1 rejected the plaintiff's application on 25.08.2011 on the grounds that the plaintiff did not reside in the notified area and that the plaintiff did not own land in the notified area. In this regard, the plaintiff stated that all necessary documentary evidence was submitted to Defendant No.1.

7. The plaintiff initially filed Writ Petition No.714 of 2012 titled 'Jaydeep v. State of Uttarakhand & Others' before the High

Court of Uttarakhand. The writ petition was disposed of on 24.04.2012 whereby the High Court directed the plaintiff to approach the appropriate forum for relief as the case involved questions of fact.

8. Consequently, the plaintiff approached the Court of Civil Judge (Junior Division) Roorkee, Haridwar District by way of filing O.S. No.2 of 2013 seeking a decree of mandatory injunction directing Defendant Nos.1 and 2 to cancel the appointment of Defendant No.3 as the Rajiv Gandhi Rural LPG Gas Distributor and to appoint the plaintiff instead of Defendant No.3. The Trial Court, by its order dated 17.09.2013, proceeded *ex parte* against the defendants due to their non-appearance and dismissed the suit filed by the plaintiff through an order dated 28.07.2014. The Trial Court held that the competent officer of Defendant No.1 had taken note of the plaintiff's allegations against Defendant No.3 and had cancelled the domicile certificate or identity card of Defendant No.3. Furthermore, the Trial Court observed that the High Court, by its order dated 24.04.2012 in Writ Petition No.714 of 2012, granted liberty to

the plaintiff to approach the appropriate forum regarding the relief sought.

9. Being aggrieved by the dismissal of the suit, the plaintiff filed a first appeal before the First Additional District Judge, Roorkee, Haridwar in Civil Appeal No.28 of 2014. On 25.07.2016, the Additional District Judge dismissed the appeal and affirmed the judgment and order dated 28.07.2014 passed by the Trial Court. The Additional District Judge opined, *inter alia*, that the relief of mandatory injunction could not be granted when an equally efficacious remedy could be obtained through other legal proceedings.

10. Being aggrieved, the plaintiff filed a second appeal before the High Court of Uttarakhand in Second Appeal No.140 of 2016. The High Court noted that despite notice being served to Defendant No.3, there was no appearance on his behalf. By order dated 01.07.2019, the High Court allowed the second appeal, setting aside the orders of the courts below and directing Defendant No.1 to undertake a fresh exercise for the grant of the dealership. The High Court observed that the records confirmed

that Defendant No.3 was a permanent resident of Saharanpur District and was therefore not eligible as per the conditions stipulated in the advertisement.

11. Aggrieved by the fact that the High Court directed Defendant No.1 to conduct a fresh exercise for granting the dealership instead of decreeing the suit in their favour, the plaintiff challenged the order dated 01.07.2019 in Second Appeal No.140 of 2016 before this Court in SLP (Civil) No.20616 of 2019. This Court dismissed the SLP (Civil) No.20616 of 2019 by order dated 02.09.2019, thereby affirming the High Court's order dated 01.07.2019.

12. Be that as it may, Defendant No.3 contended that they were unaware of the order dated 01.07.2019 and only came to know about it later. Subsequently, Defendant No.3 filed a review petition in MCC No.708 of 2019 stating that the second appeal had been decided without affording them an opportunity to be heard and that the High Court had failed to frame substantial questions of law. However, this review petition was dismissed by the High Court on 11.10.2019 holding that notice had been duly

served to the father of Defendant No.3. Aggrieved by this dismissal, Defendant No.3 approached this Court in SLP (Civil) Nos.29017-18 of 2019. By order dated 09.12.2019, this Court dismissed SLP (Civil) Nos.29017-18 of 2019.

Thereafter, Defendant No.3 filed an RTI application, which purportedly revealed that the plaintiff had submitted forged documents before the Trial Court. It was alleged that the letter dated 17.02.2012 from the Nayab Tehsildar of Roorkee, relied upon by the plaintiff, was, in fact, not issued by the Office of Tehsildar of Roorkee. Based on new information, Defendant No.3 filed a review petition before the High Court in Second Appeal No.140 of 2016 in MCC No.12090 of 2021. However, by order dated 05.01.2021, the High Court dismissed the review petition, holding that it was barred under Order 47 Rule 9 of the Code of Civil Procedure ("Code" for the sake of brevity). Subsequently, Defendant No.3 filed a correction application No.12091 of 2021, which the High Court allowed on 23.03.2021.

13. The relevant procedural facts of the case are that first respondent herein had filed O.S. No.2 of 2013 which was dismissed by an *ex parte* judgment and decree dated

28.07.2014. Being aggrieved by the dismissal of the suit, respondent No.1 herein had filed Civil Appeal No.28/2014 before the Court of Additional District Judge, Roorkee, District Haridwar. The said appeal also was dismissed by judgment dated 25.07.2016. Hence, the first respondent herein had preferred Second Appeal No.140/2016 before the High Court.

14. At this stage itself we may refer to the contentions of learned senior counsel for the appellant herein: Firstly, it was contended that the notice in the said second appeal was not served on the appellant herein by the High Court; that the said notice was served on the father of the appellant and as a result, there was no proper service of notice on the appellant herein who was the respondent(s) in the said second appeal. Secondly, even in the absence of the appellant herein the second appeal was allowed by judgment dated 01.07.2019 without formulating any substantial question of law. It was submitted that Section 100 of the Code was not complied with and as a result the said judgment and decree of the High Court was wholly contrary to the basic tenets of Section 100 of the Code.

15. It was next submitted that being aggrieved by the said judgment passed in the Second Appeal dated 01.07.2019, Review/Recall Application No.708/2019 was filed seeking to produce additional documents in order to bring to the notice of the High Court that there was, in fact, a fraud committed by the first respondent herein in the said application and also for contending that as no substantial questions of law were framed in the Second Appeal, the judgment dated 01.07.2019 had to be reviewed. However, by order dated 11.10.2019, the said Review Petition was also dismissed.

16. It is further submitted that as against the judgment in the Second Appeal, SLP (C) No.41568/2019 was preferred before this Court which was however dismissed by order dated 09.12.2019. At this stage, itself we may also mention that the appellant herein thereafter filed Review Petition being R.P. Diary. No.56394/2024 which has also been dismissed by order dated 18.12.2024. It is necessary to also note that the said Review Petition was filed before this Court during the pendency of this appeal.

17. This appeal arises out of the order dated 05.01.2021 wherein an application seeking recall of the order passed in the Review Petition dated 11.10.2019 and consequently, the judgment dated 01.07.2019 was sustained. This was on the premise that a second Review Petition is barred under Order XLVII Rule 9 of the Code.

18. We have heard learned senior counsel for the appellant and learned counsel for the first respondent and learned counsel for the second respondent as well as learned counsel for the fourth respondent-Tehsildar, Roorkee, Haridwar and perused the material on record.

19. Although several other contentions were raised by the learned senior counsel for the appellant herein, we find that this appeal could be considered and disposed of on the main contentions raised by the learned senior counsel appearing for the appellant which is, that no substantial question of law was raised in S.A. No.140/2016 and the same was allowed by judgment dated 01.07.2019 *ex parte*. Consequently, the dismissal of the suit as well as the appeal filed as against the

said judgment was reversed in the absence of there being any substantial question of law raised in the second appeal and also the appellant herein not being heard in the said appeal.

20. It was contended by learned senior counsel for the appellant that subsequent to the dismissal of the Review Petition by the High Court and which was affirmed by the Supreme Court by the dismissal of the Special Leave petition certain facts came to the knowledge of the appellant herein and as a result, an application was filed for recall of the order passed in the Review Petition as well as the judgment passed in the Second Appeal. However, by the impugned order the said application has been dismissed.

21. Learned senior counsel submitted that having regard to the material that has now come to the knowledge of the appellant herein in respect of which the appellant seeks to bring to the notice of the High court the palpable fraud that has been played by the first respondent herein in seeking a reversal of the judgment and decree of the Trial Court which was affirmed by the first appellate court and in the absence of there being any

hearing granted to the opportunity of hearing granted to the appellant herein, justice would demand that the impugned order be set aside and consequently, the order passed by the High Court in the Review Petition may also be set aside or recalled and consequently, the judgment dated 01.07.2019 may also be recalled and the Second Appeal may be restored on the file of the High Court so as to give the parties a fresh opportunity of addressing arguments before the High Court.

22. Learned senior counsel for the appellant submitted that if the second appeal is restored on the file of the High Court then liberty may be given to the appellant herein to file an application under Order 41 Rule 27 of the Code so as to bring additional evidence to the notice of the High Court by allowing this appeal.

23. Per contra, learned counsel for the respondent at the outset submitted that the impugned order would not call for any interference inasmuch as this Court has dismissed the Special Leave petition assailing not only the order passed in the second appeal dated 01.07.2019 but also the order passed in review Petition by the High Court dated 11.10.2019. Further the

belated review petition filed by the appellant before this court has also been dismissed.

24. In the circumstances, the High Court was justified in holding that there could not be a second review maintainable and thereby dismissing the application seeking recall of the order and judgment passed by the High court on 01.07.2019. He submitted that there has to be a finality to the *lis* between the parties and the appellant cannot again and again seek to reopen what has already been concluded at the hands of this Court. He therefore, submitted that there is no merit in this appeal and the same may be dismissed.

25. Learned counsel for the first respondent herein submitted that there was no fraud played by the first respondent herein and that he cannot be prejudiced or penalized if the High Court did not frame the substantial questions of law while allowing the appeal.

26. Learned counsel appearing for the second and fourth respondents submitted that an appropriate order may be made in the matter having regard to the facts of this Court.

27. The detailed narration of the aforesaid facts would not call for a reiteration. What is striking in this matter is the fact that the appellant herein who was the successful defendant before the Trial Court as well as the first Appellate Court was not really served in the second appeal by the High Court in S.A. No.140/2016 which appeal was filed by the first respondent herein. It may be that the father of the appellant herein was served but that, in our view, is not service on the appellant. Consequently, the appellant did not appear in S.A. No.140/2016, Therefore, even in the absence of giving an opportunity of being heard to the appellant herein, the judgment dated 01.07.2019 was passed in S.A. No.140/2016. More importantly, while allowing the said Second Appeal (S.A. No.140/2016) the least that the High Court ought to have done was to have framed substantial questions of law inasmuch as the appeal was allowed by judgment dated 01.07.2019 without doing so. It is necessary to observe that one of the unique jurisdictions of the High Court is to consider a Second Appeal in terms of Section 100 of the Code which is an appeal which could

be considered and entertained only on the basis of framing a substantial question of law in terms of the Section 100 of the Code. In the absence of framing any such substantial question of law in our view, the High Court could not have allowed the said appeal. In this regard, we place reliance on a recent judgment of this Court in the case of ***Hemavathi vs. V. Hombegowda, 2023 SCC Online SC 1206,*** the relevant portions of the said judgment read as under:

> "18. In this context, the law on the practice to be followed while considering a regular second appeal, has been re-iterated by this Court in C.A. No. 4935 of 2023 in Bhagyashree Anant Gaonkar vs. Narendra @ Nagesh Bharma Holkar and Anr. dated 07.08.2023, and the relevant extracts in this regard are exposited as under:
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> a) Roop Singh v. Ram Singh, (2000) 3 SCC 708, as relied upon in C.A. Sulaiman vs. State Bank of Travancore, Alwayee (2006) 6 SCC 392:
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> > "7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC."

b) State Bank of India vs. S.N. Goyal (2008) 8 SCC 9215:

> "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:
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> (a) Admitting a second appeal when it does not give rise to a substantial question of law.
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> (b) Admitting second appeals without formulating substantial question of law.
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> (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.
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> (d) Failing to consider and formulate relevant and appropriate substantial question(s) 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.
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> (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."

c) Municipal Committee, Hoshiarpur v. Punjab SEB, (2010) 13 SCC 216:

"16 A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same."

d) Umerkhan v. Bismillabi, (2011) 9 SCC 684:

"11. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without

formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question."

e) Raghavendra Swamy Mutt v. Uttaradi Mutt, (2016) 11 SCC 235:

"18. In the instant case, the High Court has not yet admitted the matter. It is not in dispute that no substantial question of law has been formulated as it could not have been when the appeal has not been admitted. We say so, as appeal under Section 100 CPC is required to be admitted only on substantial question/questions of law. It cannot be formal admission like an appeal under Section 96 CPC. That is the fundamental imperative. It is peremptory in character, and that makes the principle absolutely cardinal."

28. Therefore, we find that in the instant case, there has been a miscarriage of justice inasmuch as the appellant herein firstly, was not heard in S.A. No.140/2016; Secondly, the said second appeal was allowed in the absence of framing any substantial question of law at all. Therefore, there has been an error in passing of the judgment dated 01.07.2019 by the High Court in S.A. No.140/2016. It is for that very reason that Review Application No.708/2018 was filed by the appellant herein. The said Review Application was also dismissed on 11.10.2019. It may be that the said orders have not been interfered by this Court inasmuch as the respective Special Leave Petition and Review Petition filed as against him have been dismissed. But the *lis* has not ended in this case inasmuch as the appellant herein, on the basis of certain material on record had sought to recall the said judgment/order dated 11.10.2019 passed in Review Application No.708/2019 as well as the judgment dated 01.07.2019 passed in S.A. No.140/2016. In this regard, learned senior counsel for the appellant placed reliance on the judgment of this Court in the case of ***A.V. Papayya Sastry vs. Govt. of A.P.*, (2007) 4 SCC 221,** by contending that when there has

been a fraud played by the first respondent herein, the same would have to be considered by the High Court by recalling the earlier orders passed by it and by rehearing the parties and rendering a judgment in accordance with law. The relevant observations from the aforesaid judgments are paraphrased as under:

> "Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in *rem* or *in personam*.
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> A judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non-est in the eye of the law. Such a judgment, decree or order – by the first court or by the final court- has to be treated as nullity by every court, superior or inferior. It cannot be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.
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> The matter could be looked at from a different angle as well. ... If this Court grants leave and thereafter decides to dismiss the appeal, such an order can be a judgment to which Article 141 of the Constitution would apply and the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to

> review, recall or reconsider the order. … However, where a special leave petition is simply dismissed, the doctrine of merger would not apply.
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> The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practicing or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and *non-est* and cannot be allowed to stand. This is the fundamental principle of law. The principle of "finality of litigation" cannot be stretched to the extent of any absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

29. Further having regard to the judgment of this Court in ***Kunhayammed v. State of Kerala, AIR 2000 SC 2587***, an order refusing special leave to appeal may be a non-speaking or speaking order. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was no inclined to exercise its discretion so as to allow an appeal being filed. In the circumstances, the dismissal of the Special Leave Petition (Civil) No.41568/2019 as well as the Review Petition (Diary) No. 56394/2024 by this Court would not come in the way of the reconsideration of the second appeal by the High Court.

30. We do not wish to go into that aspect of the matter on merits but we find that we ought to give the appellant another opportunity of addressing his case before the High Court. We say so for the reason that fraud unravels everything and in the peculiar facts of this, the impugned order dated 05.01.2021, 11.10.2019 and judgment dated 01.07.2019 are liable to be set aside and are set aside. Consequently, S.A. No.140/2016 is restored on the file of the High Court.

31. Since the parties are represented by their respective counsel, they are directed to appear before the High Court on **18.02.2025** without expecting any separate notices from the said court. The High Court is requested to dispose of S.A. No.140/2016 by considering the respective contentions of the parties, the additional pleadings or applications and evidences that may be filed or let in by the parties and after framing the substantial questions of law.

Liberty is reserved to both sides to place additional evidence before the High Court in accordance with law.

32. This appeal is allowed and disposed of in the aforesaid terms.

Parties to bear their respective costs.

. . . . . J.
(B.V. NAGARATHNA)

. . . . . J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
JANUARY 21, 2025