

20 January 2025

U. Sudheera & Others Versus C. Yashoda & Others

- ❖ **TOPIC :** S. 100 CPC | High Courts Cannot Pass Interim Order In Second Appeal Without Framing Substantial Question Of Law : Supreme Court
- ❖ **BENCH:** Justices JB Pardiwala and R Mahadevan
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether Section 100 CPC can proceed without framing substantial questions of law or not
- ❖ **FACTS**
 - An appeal on the question whether the High Court could pass any ad interim order for a limited period, before framing the substantial question(s) of law, while dealing with a second appeal filed under Order XLI r/w Section 100 CPC.
 - In the present case, the High Court, without formulating substantial questions of law, granted the interim relief by directing the parties to maintain status quo, till the next date of hearing.
 - The said interim order was also subsequently extended.
 - It is also pertinent to point out that all the respondents in the second appeal have not been served and notice was unserved qua Respondent Nos.4, 6 and 7 therein.
- ❖ **OBSERVATION**
 - Observing that a second appeal under Section 100 CPC cannot proceed without framing substantial questions of law, the Supreme Court set aside the Andhra Pradesh High Court's order which granted an interim relief in the plaintiff's favor without framing a 'substantial question of law'.
 - Therefore, we are of the opinion that the High Court could not have passed the interim order without satisfying itself of the existence of a substantial question of law, as mandated under Section 100 CPC.
 - This Court has categorically held that the High Court acquires jurisdiction to deal with the second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 CPC; and it cannot grant an interim order, without framing substantial question of law

the, court added.

- “Thus, the law is clear that a second appeal will be maintainable before the High Court, only if it is satisfied that the case involves a substantial question of law. If no substantial question of law arises, the second appeal could not have been entertained and the same ought to have been dismissed, as the jurisdiction of the High Court itself is not yet invoked.”, the Court added.
- In the light of the aforesaid settled legal position, the Court set aside the interim order passed by the High Court. The Appeal was allowed, accordingly.
- ❖ **IMPORTANT PROVISION DISCUSSED**
 - Section 100 CPC (Deals with second appeals in civil cases. It states that a High Court can hear a second appeal if it is satisfied that the case involves a substantial question of law.).

Indian Overseas Bank v. M. A.S. Subramanian & ors.

- ❖ **TOPIC:** Agreement For Sale Doesn't Transfer Title Or Create Interest In Property : Supreme Court
- ❖ **BENCH:** Justice Abhay S Oka and Justice Ujjal Bhuyan
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether mere possession of a property under an agreement to sell does confer ownership or not under Indian Registration Act, 1908.
- ❖ **FACTS**
 - The dispute pertained to the ownership and possession of the property, where an agreement to sell was executed in the Company's favour by one late Shri M.A. Shanmugam (owner of the property) opposed the transfer of shares of the company in his favour.
 - The Company had the property's possession as part performance of the contract.
 - The agreement to sell was not executed in the Company's favour by the owner, rather after his death his legal heirs executed the sale deed in favour of some other person, not the Company.
 - The National Company Law Appellate Tribunal's (NCLAT's) decision- that the sale deed executed by the property owner's

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legal representative would not be binding on the company because it held possession over the property- formed the subject matter of the present appeal.

❖ **OBSERVATION**

- The Supreme Court has reaffirmed that mere possession of a property under an agreement to sell does not confer ownership unless a sale deed is duly registered under the Indian Registration Act, 1908.
- Setting aside the NCLAT's decision, the bench comprising Justice Abhay S Oka and Justice Ujjal Bhuyan observed that the NCLAT erred in holding that the sale deed executed by the owner's legal heirs was not binding on the company as the company was in possession by way of part performance of the contract.
- "It is well settled that an agreement for sale in respect of an immovable property does not transfer title in favour of the purchaser under the agreement.
- In view of Section 54 of the Transfer of Property Act, 1882, an agreement for sale does not create any interest in the property.
- The only mode by which an immovable property worth more than Rs.100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908.", the court observed.
- The Court reasoned that when the owner itself had not executed an agreement to sell in the company's favor, nor did the company make an effort to file a suit for specific performance of the contract with the legal heirs of the property owner, then the NCLAT cannot pass such a direction to hold that the sale deed executed by the owner's legal heirs would not be binding on the company.
- Accordingly, the appeal was allowed to the extent of the aforementioned observation made by the Court.

❖ **IMPORTANT PROVISION DISCUSSED**

- Section 54 TPA (Sale) It contains provision with respect to the sale of immovable property.

Mahendra Awase v. State of Madhya Pradesh

- ❖ **TOPIC:** Abetment Of Suicide' Offence Can't Be Invoked Only To Assuage Feelings Of Family; High Time To Sensitise Police : Supreme Court
- ❖ **BENCH:** Justice Abhay S Oka and Justice KV Viswanathan
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding invoking the offence of abetment of suicide
- ❖ **FACTS**
 - In this case, the petitioner was a bank manager who was alleged to have instigated the suicide of the deceased through demands for loan repayment.
 - The Court held that none of the ingredients of the offence was attracted in the instant case.
 - Taking a realistic approach of the events, the Court concluded that the acts of the accused were not carried out with the intention to drive the deceased to suicide.
- ❖ **OBSERVATION**
 - The Supreme Court reminded investigating agencies and trial courts not to mechanically invoke the offence of abetment of suicide (Section 306 of the Indian Penal Code/Section 108 of the Bharatiya Nyaya Sanhita).
 - The Court stated that the provision (S.306IPC/S.108 read with 45 BNS) cannot be invoked merely to pacify the sentiments of the family of the person who died by suicide.
 - The interactions between the accused and the deceased must be seen from a practical point of view and hyperbolic exchanges should not be exaggerated as incitement to suicide.
 - The Court observed that the time has come to sensitise the investigating agencies about the law laid down by the Supreme Court regarding the ingredients of the offence of abetment of suicide.
 - The Court also urged the trial courts to not mechanically frame charges, adopting a "play safe" approach, when the investigation has not disclosed the necessary ingredients of the offence.
 - A bench comprising Justice Abhay S Oka and Justice KV Viswanathan made these

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important observations while discharging a bank manager of the offence of Section 306 IPC.

❖ **IMPORTANT PROVISIONS DISCUSSED**

- Section 306 IPC (Abetment to Suicide)
- Section 108 BNS

Adhiraj Singh versus Yograj Singh and ors

❖ **TOPIC:** S. 141 NI Act | Resigned Director Not Liable For Cheque Issued By Company After His Resignation : Supreme Court

❖ **BENCH:** Justice JK Maheshwari and Justice Rajesh Bindal

❖ **FORUM:** Supreme Court

❖ **MAIN ISSUE**

- Regarding the cheque issued after the retirement of the director of the company.

❖ **FACTS**

- The appeal was filed against the Himachal Pradesh High Court's refusal to quash the cheque dishonor case against the Appellant, who had resigned from the company's directorship before the issuance of cheque by the company towards a legally existing debt.
- Three post-dated cheques dated 17.07.2019, 17.09.2019, and 23.09.2019 were issued by Respondent No. 2 – Company on 12.07.2019.
- However, the Appellant had resigned from the company's directorship on 21.06.2019, whose resignation was deemed effective from the date of resignation.
- The Appellant claimed that on the date of issuance of the cheques, he was not the director of the Company and had not signed the cheques.

- Therefore, he cannot be held responsible for the affairs of the Company. In case any debt existed and the Company had issued any cheque, the appellant cannot be held liable for offence under Section 138 of the Negotiable Instruments Act, and saddling him to face trial would amount to misuse of process of law.

❖ **OBSERVATION**

- The Supreme Court observed that the cheque issued after the retirement of the director of the company would not trigger his liability under
- Section 141 of the Negotiable Instrument Act, 1882 (“NI Act”).
- “In view of the said factual scenario and in absence of any other material brought before us, we are inclined to set aside the common order passed by the High Court and allow the quashing petitions as filed by the appellant before the High Court.”
- Accordingly, the Appeal was allowed.
- “Once the facts are plain and clear that when the cheques were issued by the Company, the appellant (director) had already resigned and was not a director in the Company and was not connected with the company, he cannot be held responsible for the affairs of the Company in view of the provisions as contained in Section 141 of the NI Act.”, the Court said.

❖ **IMPORTANT PROVISIONS DISCUSSED**

- Section 141 of the Negotiable Instrument Act, 1882 (“NI Act”) deals with the liability of companies and their employees for offenses committed under Section 138 of the Act.

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