

Bombay High Court
Barnes School vs Smt. Arzoo Allan Baker on 17 February, 2012
Bench: R. M. Savant

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.453 OF 2010

WITH
CIVIL APPLICATION NO.554 OF 2010
IN

SECOND APPEAL NO.453 OF 2010

1) Barnes School,

Deolali Tal. & Dist. Nashik
Through its Principal

2) Bombay Education Society,
Christ Church School,

Clare Road, Byculla,
Mumbai 400 008

.. Appellants
(Orig. Defendants)

Versus

Smt. Arzoo Allan Baker
Resident of H.No.7, Spring Time,

Meadows Harikishan Nagar,
Second Sansari Lane,

Deolali Camp,
Tal. & Dist. Nashik

.. Respondent
(Orig. Plaintiff)

Shri S.C. Naidu with Shri N.P. Dalvi i/b. C.R. Naidu & Co. for

Appellants.

Shri Anilkumar Patil, Advocate with Mr. Sachin Pawar, Advocate for
Respondent.

CORAM : R. M. SAVANT, J.

DATED : 17th February, 2012 2 sa453-10 .sxw ORAL JUDGMENT :

1 Admit. With the consent of the parties, the Second Appeal is taken up for hearing forthwith. The above Second Appeal takes exception to the judgment and order dated 2.9.2009 passed by the learned Adhoc District Judge-1, Nashik by which the appeal filed by the appellants herein, i.e., the original defendants, came to be dismissed and the judgment and order of the Trial Court dated 8.2.2006 passed by the the Learned Civil Judge, Senior Division, Nashik came to be confirmed. The substantial question of law which arises for consideration in the above appeal is "whether the lower Appellate Court could have disposed of the appeal without following the mandate of Order 41 Rule 31 of the Civil Procedure Code, notwithstanding the fact that it was in agreement with the judgment of the Trial Court".

2. It is not necessary to burden this judgment with unnecessary facts; suffice it to say that the suit in question i.e. Special Civil Suit No. 260 of 2001 came to be filed by the respondent herein for claiming the amount under three heads totaling to Rs.1,99,397/- from the appellants herein i.e. the defendants in the suit. The respondent who is the original plaintiff was working as an Assistant Teacher. The plaintiff claimed the amount on the basis of the arrears on account of difference 3 sa453-10 .sxw of wages in view of the 5th Pay Commission for the period 1.1.1996 to 31.5.2001 which was an amount of Rs.97,166/-, bonus for the period from 1986-87 and 1999-2000 which was an amount of Rs.33,866/-, salary for the period 1st October, 2000 to 8th February, 2001 i.e. 48,051/-

and salary for the period 9th February, 2001 to 31st March, 2001 i.e. Rs.

20,314/-, thus, totally making an amount of Rs.1,99,397/-.

3. In so far as the suit was concerned, various issues have been framed on the basis of the claim which was made in the suit as regards the amounts. However, what is relevant to note from the point of view of the above Second Appeal are the issues 8, 9 and 10 framed by the Trial Court which are to the following effect:-

"8. Whether suit is bad in law for want of Yes

sanction from competent authorities
under Bombay Public Trust Act, 1950?

9. Whether plaintiff is entitled for the reliefs Yes

claimed in this suit?

10. Whether this court has jurisdiction to Yes
entertain and try the present suit of the
plaintiff?

10. What order and decree? As per final order'

4. The parties went to trial and the plaintiff adduced evidence in support of her claims. The Trial Court decreed the suit. However, in so far as the amount claimed by way of bonus was concerned, the said claim was rejected. The Trial Court answered the issue as to whether the suit was bad in law for want of sanction from the authorities under the Public Trust Act in the negative. So far as the issues whether the plaintiff was entitled for reliefs claimed in the suit as well as whether the Civil Court has jurisdiction to try and entertain the suit, both issues are answered in favour of the plaintiff by the Trial Court. The Trial Court, therefore, by judgment and order dated 8.2.2006 partly decreed the suit. Aggrieved by the decreeing of the suit the defendants i.e. the appellants herein filed Regular Civil Appeal No.249 of 2006 and in the context of the present Second Appeal paragraphs 14, 15 and 16 of the impugned judgment and order passed by the Lower Appellate Court are relevant and are reproduced herein below :

"14. I have gone through the judgment and decree of the trial court. Findings given by the trial court are just, proper and legal.

15. In view of the case law, in a case of Girijanandini Devi and others V/s Bijendra Narain Choudhary, reported in AIR 1967 Supreme Court 1124.

16. Their Lordships have held that when appellate court agrees with view of trial court on 5 sa453-10 .sxw evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of general agreement with reasons given by Court decision of which is under appeal would ordinarily suffice."

5. The Lower Appellate Court was of the view that the judgment of the Apex Court in Girijanandini Devi's Case (Supra) was on the proposition that "When the Appellate Court agrees with view of Trial Court on evidence it need not restate effect of evidence or reiterate reasons given by Trial Court". The Lower Appellate Court, therefore, has dismissed the appeal without recording any finding on the issues framed, by merely observing that since it is in agreement with the findings recorded by the Trial Court, it was not required to restate reasons in view of the judgment in Girijanandini Devi's Case (Supra).

6. Learned counsel for the appellants Shri Naidu drew my attention to the judgment in Girijanandini Devi's case. The facts of the said case were that from the decree passed by the Subordinate Judge, Purnea, an appeal was filed in the High Court as the High Court was the Appellate Court in so far as the said decree was concerned. It is in the said context that the Apex Court in paragraph 12 of the said judgment has observed thus :-

6 sa453-10 .sxw "12. The result therefore is that even if Ram Nath, Kesho Ram Gupta and Raghunandan Prasad had incurred the disqualification under Cl.(g) of S 13-

D of the Act, they were not incompetent to exercise their rights as members of the board and could therefore validly sign the notice of motion of no confidence and take part in the proceedings of the meeting held in pursuance of the provisions of S 87-A of the Act on February 6, 1961. It follows that the proceedings of, and the resolution passed at, the meeting of February 6, 1961, are valid and that the order of the High Court dismissing the appellant's writ petition is correct, though for different reasons.

It is not the duty of the Appellate Court when it agrees with the view of the Trial Court on the findings of fact or the evidence to reiterate reasons given by the Trial Court."

7. The judgment of the Apex Court in Girijanandini Devi's Case (Supra) was rendered when sub-rule (4), as it stands today, was not on the statute book. Sub-rule(4) as can be seen has been inserted by Amendment Act, 1976 w.e.f. 1.2.1977. The said sub-rule(4) reads as under :-

"Sub-rule.(4): Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (a), it shall deliver a judgment, recording in brief its grounds

for doing so, and a decree shall be drawn up in accordance with the judgment."

8. Therefore, as per sub-rule (4) an Appellate Court not being the High Court dismisses an appeal under sub-rule(a), it shall deliver a 7 sa453-10 .sxw judgment, recording in brief its grounds for doing so, and a decree shall be drawn in accordance with the judgment.

9. Another aspect which is not considered by the Lower Appellate Court is the obligation of the Lower Appellate Court in terms of Order 41 Rule 31 of the Civil Procedure Code. The said Order 41 Rule 31 mandates the Appellate Court to frame the points for determination, the decision thereon, the reasons for the decision; and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. In so far as the Order 41 Rule 31 is concerned, the same has been the subject matter of the authoritative pronouncements of the Apex Court from time to time. Reference could be made to the latest judgment of the Apex Court reported in 2010(13) Supreme Court Cases 158 in the matter of OmPrakash Verma vs. State of Andhra Pradesh and Ors. The Apex Court in the said judgment has expounded the obligation of the Appellate Court in Order 41 Rule 31. The Apex Court in para 62 has held that the Order 41 Rule 31 of the C.P.C. casts obligation on the author of the appellate judgment to state the points for determination, the decision thereon, reasons for the decision and when the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

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10. The judgment of the lower appellate court in the instant case is therefore in the teeth of the judgment in OmPrakash Verma's Case (supra) rendered without adhering to the mandate of Order 41 Rule 31 of the C.P.C., more so in a case where the jurisdiction of the Civil Court as also the entitlement of the plaintiff to the amounts claimed is a contentious issue between the parties. The lower Appellate Court has erred in dismissing the Appeal without recording any findings in respect of the issues which were framed. Hence, on the application of the judgment of the Apex Court in OmPrakash Verma's Case (supra) the impugned judgment and order of the lower Appellate Court cannot be sustained. The question of law stands answered accordingly. The above Second Appeal is accordingly allowed. The impugned judgment and order dated 8.2.2006 passed by the lower Appellate Court is set aside and the matter is relegated back to the lower Appellate Court for a de novo consideration of the Appeal with a direction that the lower Appellate Court to record findings in respect of the issues framed in the said Appeal. The above Second Appeal is accordingly allowed with parties to bear costs. Needless to say that the contentions of the parties on merits are expressly kept open for being urged before the lower Appellate Court. The decretal amount deposited by the original defendants i.e. the Appellants in this Court be transmitted by the office 9 sa453-10 .sxw to the District Court, Nashik forthwith. On remand, the Appeal be heard and disposed of within 6 months of the first appearance of the parties. The parties to appear before the lower Court on 12th March, 2012. Lower Appellate Court on receipt of the decretal amount may consider investing the same in a fixed deposit for a short term period.

11. In view of the disposal of the Second Appeal, the Civil Application does not survive and stands accordingly disposed of.

(R. M. SAVANT, J.)