

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2025
(@ SLP(C) No. 11322/2019)

BANKAT SWAMI TRUST & ORS.

APPELLANT(S)

VERSUS

DAIWAN(DEAD) BY LRS. & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. _____ OF 2025
(@ SLP(C) No. 24066/2019)

O R D E R

1. Leave granted.
2. The short question that arises for consideration in both these appeals is as to whether the procedure adopted by

the High Court, while dealing with a Second Appeal arising out of the judgment and decree rendered by the First Appellate Court, thereby remitting the matter back to the Trial Court, is correct or wrong.

3. The law is quite settled on this aspect. It has been repeatedly held that the Code of Civil Procedure, 1908 does not contemplate such a situation as, at best, the High Court, if it is of the view that a finding of fact is required for the adjudication of the second appeal, can call for the same from the Trial Court, by keeping the appeal pending.
4. For the aforesaid purpose, there is no need to set aside the judgment and decree of the First Appellate Court and, thereafter, remit it to the Trial Court for fresh consideration.
5. In such view of the matter, the impugned judgment stands set aside with a direction to the High Court to decide the Second Appeal on its own merit and in accordance with law.
6. We make it clear that all the issues are left open to be decided by the High Court. Taking into consideration the fact that the Civil Appeal is pending from way back, i.e. the year 1991 onwards, we request the High Court to consider and expedite the hearing and make an endeavour to dispose of the Second Appeal within a period of six

months from today.

7. The appeals are disposed of accordingly, on the aforesaid terms.
8. Pending application(s), if any, shall also stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[RAJESH BINDAL]

NEW DELHI;
12th FEBRUARY, 2025

ITEM NO.13

COURT NO.8

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 11322/2019

[Arising out of impugned final judgment and order dated 19-12-2018 in SA No. 532/1991 passed by the High Court of Judicature at Bombay at Aurangabad]

BANKAT SWAMI TRUST & ORS.

Petitioner(s)

VERSUS

DAIWAN(DEAD) BY LRS. & ORS.

Respondent(s)

WITH

SLP(C) No. 24066/2019 (IX)

Date : 12-02-2025 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
 HON'BLE MR. JUSTICE RAJESH BINDAL

For Parties

Mr. Shashibhushan P. Adgaonkar, AOR
 Mr. Gagan Deep Sharma, Adv.

Mr. Sudhanshu Choudhari, Sr. Adv.
 Mr. Vatsalya Vigya, AOR

UPON hearing the counsel the Court made the following
 O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SWETA BALODI)

ASTT. REGISTRAR-cum-PS

(POONAM VAID)

ASSISTANT REGISTRAR

(Signed order is placed on the file)