

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 266/2015

Decided on: 18.09.2026

Babu Ram

.....Appellant

Versus

National Thermal Power Corporation & anr. Respondents

Coram

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting ?¹

For the appellant: Mr. Hitender Verma, Advocate.

For the respondents: Mr. Neeraj Gupta, Sr. Advocate with
Mr. Pranjal Munjal, Advocate, for
respondent No.1.

Mr. C. N. Singh & Mr. Jagat Narayan,
Advocates, for respondent No.2.

Romesh Verma, Judge (oral)

The present appeal arises out of the judgment and decree, dated 12.11.2014, as passed by the learned District Judge, Bilaspur, H.P. whereby the appeal preferred by the appellant/plaintiff has been dismissed and the judgment and decree, dated 18.12.2013, dismissing the suit of the

¹ *Whether reporters of Local Papers may be allowed to see the Judgment ?Yes*

plaintiff/appellant, as passed by the learned Civil Judge (Senior Division), Bilaspur, H.P. have been affirmed.

2 The facts, as emerge in the instant case, are that plaintiff/appellant filed a suit for recovery of damages of Rs. 2,00,000/- from defendant No.1 and Rs.50,000/- from defendant No.2 on account of causing damages to the plaintiff. As per the case set up by the plaintiff, defendant No.1 had taken up construction of a Hydel Project at Kol Dam, (Harnora) with aid of defendant No.2. The plaintiff was owner in possession of a house alongwith land in village Cham Yong, which was acquired for the benefit of defendant No.1, through Collector, Land Acquisition, Bilaspur, qua which inadequate compensation was paid to the plaintiff by defendant No.1.

3 It has been averred that at the time of acquisition proceedings, an agreement was entered between the oustees and defendant No.1, whereby after payment of compensation, the material of the house(s) was to be transported to the place where the oustee(s) intended to raise construction of new house(s). Therefore, as per terms of the agreement, defendant No.1 was under mandatory obligation to transport the material of the house of the plaintiff, having been dismantled after acquisition, to the new place of

construction. As per the plaintiff, some material was transported to the new place of construction. 20 trollies (tractors) of material were thrown on the road side, which goes from Harnora to Kasol and 20 tractors of material were thrown at a place just near the house of the plaintiff towards downside, which was at a distance of about 363 mts. where the house was being constructed and 20 trollies of material were thrown below the house at a distance of 257 mts. The material, which was thrown below the house, was dumped by defendant No.2 by rolling their own land, where they used to park their vehicles and also established their office along with diesel pump etc.

4 As per the plaintiff, the value of the material dumped by defendant No.1 at the place of old construction was Rs. 1 lac and the material which was thrown on the road side was amounting to Rs.50,000/-, whereas material amounting to Rs.50,000/- was dumped by defendant No.2, therefore, Rs.1,50,000/- was to be recovered from defendant No.1, and Rs.50,000/- from defendant No.2. Defendant No.1 was also under obligation under the terms of the agreement to pay Rs.50,000/- as houseless grant, which has not been paid to the plaintiff. The plaintiff, after service notices upon the respondents, requested them to pay the aforesaid

amount, but they did not pay any heed to his request. Hence, the plaintiff has filed the suit for recovery, as aforesaid.

5 The suit was resisted by the defendants by filing their written statements separately. Defendant No.1 filed its written statement, wherein preliminary objections qua maintainability, cause of action etc. were raised. On merits, all the averments, as made in the plaint, were specifically refuted and denied. It was stated by defendant No.1 that the full and final compensation of land as well as built up structure etc. was paid by the LAC and possession of the land/property was handed over to defendant No.1 by the LAC Bilaspur free from all encumbrances. Adequate compensation on the higher side was given to the plaintiff as well as other villagers. Total land measuring 16-13 Bighas of the plaintiff was acquired by the LAC, Koldam, for which an amount of Rs.1,10,48, 593.15 was paid to the plaintiff.

6 As per defendant No.1, after receipt of compensation amount, the plaintiff has no right, title or interest over the acquired land/built up structure/house, material generated after the dismantling of the structure, trees etc. It was specifically denied that there was any agreement between the oustees and defendant No.1 for

transportation of the material of the house(s) to the destination at their new place of construction. As per defendant No.1, in order to facilitate and expedite the rehabilitation and resettlement of the plaintiff and other similar situated persons, the entire reusable material generated on account of the dismantling of structure was completely shifted by defendant No.1 to the destination as desired by the plaintiff despite the fact that the plaintiff had no right or claim over the alleged materials as he had been paid for the same under the Land Acquisition Act. All the material as shown by the plaintiff was transported by defendant No.1 to the destination shown by him. Therefore, defendant No.1 prayed for dismissal of the suit.

7 Defendant No.2 filed its separate written statement, wherein it denied all the averments as made in the plaint. It was stated that the plaintiff had vaguely stated that the defendant No.2 had dumped material worth Rs.50,000/-. The plaintiff has not clarified as to what material was dumped at which place and how he assessed the value of the material. Defendant No.2 also prayed for dismissal of the suit.

8 The plaintiff filed replication(s) to the written
statements as filed by the defendants and reiterated all the
averments as made in the plaint.

9 On the pleadings of the parties, the learned trial
court on 19.01.2006 framed the following issues:-

- 1. Whether the plaintiff is entitled to damages of Rs.2,00,000/- from the defendant No.1 and Rs.50,000/- from the defendant No.2 as prayed for?---OPP.*
- 2. Whether the suit is not maintainable? OPD.*
- 3. Whether the plaintiff has no cause of action? OPD.*
- 4. Whether this Court has no jurisdiction to hear and decide the present suit? OPD.*
- 5. Relief.*

10 The learned trial court directed the parties to
adduce evidence in support of their contentions to
corroborate their respective case. The learned trial court vide
its judgment and decree dated 18.12.2013 dismissed the suit
of the plaintiff.

11 Feeling aggrieved by the judgment and decree,
dated 18.12.2013, the plaintiff/appellant preferred an appeal
before the learned first appellate Court which came to be
dismissed vide judgment and decree dated 12.11.2014.

12 Still feeling dissatisfied by the aforesaid
judgments and decrees, plaintiff/appellant has preferred the

present regular second appeal, which came to be admitted by this Court on 28.09.2015 on the following substantial question of law:

“Whether on account of mis-appreciation of the pleadings and misreading of the oral as well as documentary evidence available record the findings recorded by both Courts below are erroneous and as such the judgment and decree impugned in the main appeal being perverse is vitiated and not legally sustainable?”

13 It is contended by Mr. Hitender Verma, learned counsel for the plaintiff/appellant that the impugned judgments and decrees, as passed by the learned courts below, are erroneous and thus, liable to be quashed and set aside. He has submitted that the learned Courts below have not appreciated the real point of controversy and have mis-interpreted and mis-construed the oral as well as documentary evidence, as a result of which, great prejudice has been caused to the appellant. He has further submitted that after accepting the instant appeal, the suit as filed by the plaintiff, deserves to be decreed.

14 On the other hand, Mr. Neeraj Gupta, learned Senior Advocate, assisted by Mr. Pranjal Munjal, learned counsel for defendant/respondent No.1 and Mr. Jagat

Narayan Singh, Advocate, for respondent No.2 has defended the impugned judgments and decrees as passed by the learned courts below. They have submitted that the learned Courts below after taking into consideration the entire material placed on record have rightly dismissed the suit of the plaintiff/appellant. They have submitted that this Court while invoking provisions of Section 100 of CPC will not interfere with the concurrent findings of fact, as rendered by the learned Courts below and, thus, prayed for dismissal of the instant appeal.

15 I have heard the learned counsel for the parties and have also gone through the material available on the case file.

16 In the present case, primarily, the case set up by the plaintiff is that though the land, house and trees of the plaintiff were acquired by defendant No.1 through LAC Kol Dam, however compensation as awarded was inadequate and very meager. As per the plaintiff, there was an agreement between the oustees and defendant No.1 that after payment of total compensation, material of the dismantled house was to be transported to the place where the oustees intended to raise construction of their new houses. As per the plaintiff it was mandatory obligation on the part of the

defendant No.1 to transport the material of his house. Though in para 6 of the plaint, the plaintiff has given details of the damages, which as per him, he had suffered, however, as rightly pointed by the learned counsel for respondent No.2 that in order to establish his case, it was incumbent upon the plaintiff to have placed on record some agreement as the plaintiff has placed reliance on the agreement, especially in para 4 of the plaint.

17 Admittedly and as rightly held by the learned learned courts below, there was no agreement inter se the parties, which may demonstrate and substantiate that there was any legal obligation on the part of defendant No.1 to transport the construction material of the plaintiff after dismantling his house.

18 It has been contended by the learned senior counsel for defendant No.1 that the entire amount of compensation stood paid to the plaintiff and thereafter, land as well as structure became property of defendant No.1. As a good will gesture, defendant No.1 transported the building material of the plaintiff, though it was not binding and obligatory on its part, therefore, under such circumstances, claim as set up by the plaintiff is an afterthought, imaginary and incorrect.

19 Though learned counsel for the appellant has vehemently argued that the appellant is entitled for grant of damages on account of legal obligation to transport construction material after dismantling of the house to the location where new house was to be constructed, however in absence of oral as well as documentary evidence, this Court does not see any infirmity or illegality in the impugned judgments and decrees, as passed by the learned Courts below.

20 Learned counsel for respondent No.2 has drawn attention of this Court to cross-examination part of the plaintiff, where he has categorically admitted that no agreement was entered into inter se the plaintiff and defendant No.1. This admission on the part of the plaintiff demolishes his case in its entirety.

21 The Hon'ble Supreme Court in catena of judgments has held that the first appellate court is the final court of the fact. No doubt, second appellate court exercising the power under Section 100 of CPC can interfere with the findings of fact on limited grounds such as - (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of the relevant admissible evidence; (c) where it is

based on misreading of evidence; (d) where it is perverse, but that is not case in hand.

22 The Hon'ble Supreme Court while dealing with scope of interference under Section 100 of CPC in ***Hero Vinoth (minor) vs. Seshammal, (2006) 5 SCC 545*** has held as under:

"18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that : "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general

public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

" 19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

20. to 22 xx xx xx xx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the

parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

23 The Hon'ble Supreme Court in **Annamalai vs. Vasanthi, 2025 INSC 1267**, has held as follows:-

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff-appellant and the circumstance that signature(s)/ thumbmark of D-1 and D-2

were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A-2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction.

18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with

preparedness to fulfil his obligation and accept performance when the time for performance arrives.”

24 This Court is of the considered opinion that the learned Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record. Thus, there is no illegality or perversity in the impugned judgments and decrees, as concurrently passed by the learned Courts below, and the same are upheld. The substantial question of law is answered accordingly.

25 No other point was urged by the learned counsel for the parties.

26 In view of above, the present appeal being devoid of any merit deserves to be dismissed. Ordered accordingly. Pending application(s), if any, also stands disposed of.

18th September, 2026

(pankaj)

**(Romesh Verma)
Judge**