

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 90/2026

Decided on: 20.08.2026

Rajeev Parmar

.....Appellant

Versus

M/s Saini Concrete Works & anr.

.....Respondents

Coram

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

Whether approved for reporting ?¹

For the appellant: Mr. Ankit Dhiman & Mr. Hemant
Thakur, Advocates.

For the respondents: Mr. Shashwat Dadwal, Advocate, for
respondent No.1.

Romesh Verma, Judge (oral)

The present appeal arises out of the judgment and decree, dated 10.10.2023, as passed by the learned Additional District Judge, Palampur, District Kangra, H.P. , whereby the appeal preferred by the appellant/defendant No.2, Rajeev Parmar, has been dismissed and the judgment and decree, dated 13.03.2020, decreeing the suit of the

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

plaintiff/respondent No.1, as passed by the learned Senior Civil Judge, Palampur, District Kangra, have been affirmed.

2 Brief facts of the case are that plaintiff/respondent No.1, M/s Saini Concrete Works, through its proprietor, namely, Neelam Saini, filed a suit for recovery of Rs. 44,390/- along with compound interest @ 12% per annum against defendant No.1/respondent No.2, namely, the Head Master/School Management Committee (SMC), Government Primary School, Ghuggar and present appellant/defendant No.2, Rajeev Parmar. It was averred in the plaint that the plaintiff/respondent No.1 is running her business of making and supplying of concrete hollow blocks under the name and style of M/s Saini Concrete Works, Near 132 KV Sub-Station, Dehan, Tehsil Palampur, District Kangra, H.P. She had appointed her husband Sanjay Saini as her special power of attorney to file the suit.

3 As per the case set up by the plaintiff, on the basis of the order, as placed by defendant No.1 to the plaintiff for supply of concrete hollow blocks, she supplied 1600 concrete hollow blocks to defendant No.1 for a total sum of Rs.44,390/- vide bills No. 174 and 175, dated 20.01.2011

and 27.01.2022. Defendant No.1 had assured that the aforesaid payment will be made within seven days. Thereafter, various requests were made to defendant No.1 for getting the aforesaid payment, but every time, defendant No.1 on one pretext or the other postponed the payment of the said amount and finally the plaintiff was constrained to issue a legal notice to defendant No.1 through her counsel on 26.11.2022 asking him to make the payment as period of more than one year and 10 months had elapsed. Defendant No.1 vide reply, dated 06.12.2012 to the legal notice, responded to plaintiff that defendant No.1 had engaged defendant No.2, Rajeev Parmar, who did all the construction work and all the payments were made to him and even the payment of hollow blocks supplied by the plaintiff was also made to defendant No.2. Though on various occasions, defendants were requested to pay the said amount, however they failed to accede to the request of the plaintiff, therefore, under such circumstances, the plaintiff filed the suit, as aforesaid.

4 The suit was resisted by the defendant No.1 by filing written statement, wherein preliminary objections qua locus standi, maintainability, non-joinder and mis-joinder of

necessary parties, limitation, 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 no order to supply concrete hollow blocks was ever placed by defendant No.1 to the plaintiff, hence, question of any payment to the plaintiff does not arise at all. As per case of defendant No.1, execution of the work was done by defendant No.2 and to this effect, resolution No. 44, dated 19.1.2011 was passed and consequent thereupon, work was executed by defendant No.2 and the same was acknowledged by him before the SMC vide his separate statement, wherein he had agreed that he would purchase all the construction material himself and would get the payment from the SMC. It was averred that the factum of payment by the SMC is reflected in the bills, which were signed by the Secretary and Head Teacher and resolution No. 46 was passed on 23.2.2011 to make the payment of Rs.2,00,000/- vide cheque No. 709922, dated 01.03.2011. There is no contract between the plaintiff and defendant No.1, therefore, question of any kind of payment does not arise at all. Thus, defendant No.1 prayed for dismissal of the suit, as filed by the plaintiff.

5 Defendant No.2 filed separate written statement taking therein preliminary objections qua maintainability, cause of action etc. On merits, it was averred that defendant No.2 was not aware of the fact that any order for concrete hollow blocks was placed by defendant No.1 to the plaintiff, however, concrete hollow blocks were used in erecting school building. Defendant No.2 was unaware whether any concrete hollow blocks were factually delivered to defendant No.1 by the plaintiff. It was further averred that he is a contractor and miscellaneous construction was given to him after tenders were invited. He was not made any payment to be given to the plaintiff qua purchase of hollow bricks. When he was executing construction work, defendant No.1 obtained a blank stamp paper from him containing his signatures therein and he apprehended that the said papers must have been tampered with and fabricated by defendant No.1. Defendant No.2 refuted all the allegations as made in the plaint, thus, he prayed for dismissal of the suit.

6 The plaintiff filed replication to the written statement as filed by defendant No.1 and reiterated all the averments as made in the plaint.

7 As far as replication filed by the plaintiff to the written statement of defendant No.2 is concerned, it was averred by the plaintiff that it is inter se defendants No. 1 and 2 to settle matter with the plaintiff as the plaintiff had supplied material to defendant No.1 and since no payment has been made to the plaintiff despite repeated requests, therefore, suit is liable to be decreed.

8 On the pleadings of the parties, the learned trial court on 30.08.2014 framed the following issues:-

- 1. Whether plaintiff is entitled for recovery of Rs.44,390/- alongwith interest as prayed for? OPP.*
- 2. Whether plaintiff has no locus standi to file the present suit as alleged? OPD.*
- 3. Whether suit is not maintainable as alleged? OPD.*
- 4. Whether suit is barred by limitation, as alleged? OPD.*
- 5. Whether suit is bad for non joinder and mis joinder of necessary parties, as alleged? OPD.*
- 6. Whether suit has not been properly valued for the purposes of court fee and jurisdiction as alleged? OPD.*
- 7. Relief.*

9 The learned trial court directed the respective parties to adduce evidence in support of their contentions to corroborate their respective case. The learned trial court vide its judgment and decree dated 13.03.2020 decreed the suit of

the plaintiff for recovery of Rs.44,390/- along with interest @ 6% per annum from defendant No.2 only from the date of filing of suit till its actual realization.

10 Feeling dissatisfied by the judgment and decree, dated 13.03.2020, defendant No.2/appellant preferred an appeal before the learned first appellate Court on 11.04.2022, which came to be dismissed vide judgment and decree dated 10.10.2023.

11 Still feeling dissatisfied by the aforesaid judgments and decrees, defendant No.2/appellant has preferred the present regular second appeal.

12 With the consent of the parties, the instant appeal is finally heard at admission stage on the following substantial question of law:-

Whether the impugned judgments and decrees passed by the Courts below are totally perverse to the oral as well as documentary evidence on record, as such, are not sustainable in the eyes of law?

13 It is contended by Mr. Ankit Dhiman, learned counsel for the defendant No.2/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 misinterpreted 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 the plaintiff has not been able to make out a case for decreeing the suit, therefore, after accepting the instant appeal, the suit as filed by the plaintiff, deserves to be dismissed.

14 On the other hand, Mr. Shashwat Dadwal, learned counsel for plaintiff/respondent No.1 has defended the impugned judgments and decrees as passed by the learned courts below. He has submitted that the learned Courts below after taking into consideration the oral as well as documentary evidence have rightly decreed the suit of the plaintiff/respondent No.1. He has 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 order to substantiate the case of the plaintiff, Sanjay Saini, husband of the plaintiff, appeared in the witness box as PW1 and stated that the plaintiff had given special power of attorney, Ext. PW1/A in his favour to depose before the Court. He stated that defendant No.1 had telephonically ordered the plaintiff to supply 1600 hollow blocks amounting to Rs.44,390/- vide bills, Ext. PW1/B and Ext. PW1/C. The said bills were raised in favour of defendant No.1. He stated that the aforesaid hollow boxes were delivered to defendant No.1 on 18.01.2011. He stated that defendant No.1 had requested the plaintiff to supply hollow blocks immediately and the payment shall be made very soon. Though hollow blocks were supplied to defendant No.1, but he failed to make the payment. When defendant No.1 failed to make the payment, the plaintiff was constrained to issue legal notice, Ext. PW1/D, postal receipts thereof are Ext. PW1/E. The said notice was responded by defendant No.1 vide reply, Ext. PW1/F, wherein it was stated that the payment had been made to defendant

No.2. After receipt of reply, the plaintiff came to know about resolution.

17 In his cross-examination, as conducted by defendant No.1, he denied that no order for the supply of hollow blocks was given by the defendant No.1. Self stated that the order was given telephonically. He denied that order was given by defendant No.2. He stated that he does not know that construction work of the school building was given to defendant No.2. Self stated that he came to know about the allotment of work to defendant No.2 only after receipt of reply to the legal notice as issued by the plaintiff. He admitted that subsequently he came to know that construction work of the school building was allotted to defendant No.2. He admitted that resolution No. 44 was passed on 19.1.2011, whereby defendant No.2 was to purchase the building material. He admitted that there is no written contract between the parties. Self stated that order was made telephonically by defendant No.1. He stated that he does not know that as per resolution, defendant No.1 had made the payment of Rs. 2 lacs to defendant No.2.

18 While being cross-examined by defendant No.2, PW1 stated that hollow blocks were delivered to defendant

No.1 in the school after due counting. He admitted that he never went to defendant No.2 for getting payment as he had not made any order for supply of hollow blocks. Before getting reply to the legal notice, PW1 was not having knowledge as to who was raising construction of school building.

19 In order to rebut the case of the plaintiff, Smt. Suresh Sharma, Head Teacher, Govt. Primary School, Ghuggar, appeared in the witness box as DW1 and brought the record as requisitioned by defendants.

20 DW2 Ramesh Chand, CHT, Govt. Primary School, Dehan, deposed that he remained H.T. Co-education School, Palampur from 2004 to 2015. Four rooms were to be constructed in the school. He stated that the School Management Committee (SMC) is constituted for smooth functioning of the school. SMC had hired defendant No.2 for construction of the rooms in the school. He stated that defendant No.1 had entered into an agreement with defendant No.2, Ext. DW2/A, which contains his signatures and that of defendant No.2. He further stated that defendant No.2 had appended his signatures over Ext. DW2/A after reading and accepting the contents of the same to be correct.

After entering into agreement, resolution No. 44, dated 19.1.2011, Ext. DW2/B was passed and a sum of Rs.1,50,000/- was given to defendant No.2. Thereafter, resolution No. 46, dated 23.2.2011, Ext. DW2/C was passed and as per the same, defendant No.1 had made payment in favour of defendant No.2. He stated that defendant No.2 had received the payment vide receipts, Ext. DW2/E and Ext. DW2/F. He deposed that the SMC had given the payment to defendant No.2 by means of cheque and the record of the cheque book is Ext. DW2/G. The plaintiff had wrongly issued notice, Ext. PW1/D to defendant No.1, and in response to that it was stated that SMC had no contract with the plaintiff.

21 In his cross-examination conducted on behalf of defendant No.2, he admitted that the suit has been filed for recovery of Rs.44,390/-. He admitted that while raising construction, hollow blocks were used for the same. He admitted that after receipt of legal notice, the SMC had not initiated any proceedings against defendant No. 2.

22 While being cross-examined by the plaintiff, he admitted that whenever a person purchases any product, in that event, bill is always prepared in his name. He stated

that he does not know that the plaintiff had supplied 1600 hollow blocks. He further stated that he does not know that total value of those hollow blocks were Rs.44,390/-. Self stated that defendant No.1 had made the payment to defendant No.2. He admitted that hollow blocks were supplied. He stated that he could not say when hollow blocks were supplied. He admitted that the SMC never made any payment to the plaintiff.

23 DW3 Rajeev Parmar, deposed that he is working as Contractor. In the year 2011, he was assigned construction work of school building. He knew the plaintiff and defendant No.1. He never purchased hollow blocks from the plaintiff. He never received any payment from defendant No.1 qua hollow blocks.

24 In his cross-examination conducted on behalf of defendant No.1, he admitted that he was allotted construction work of rooms in the school building and to this effect, agreement, Ext. DW2/A was executed inter se the parties. He admitted that he had appended his signatures on Ext. DW2/A. Self stated that his signatures were obtained on the blank papers. He admitted that he appended his signatures after reading the document

properly. He admitted that SMC was constituted for carrying out construction work in the school and the said SMC had given the construction work to him. He admitted that as per Ext. DW2/B, he had received payment of Rs.1,50,000/-. He denied that he had received payment of Rs.2,00,000/- through cheque No.709922. He admitted that he had received payment of Rs.2,00,000/- in the 1st month of 2011. He admitted that when resolution, Ext. DW2/D was passed, he had received a sum of Rs.15,000/-. He admitted the payment receipt, Ext. DW2/E, which bears his signatures.

25 In his cross-examination conducted by the plaintiff, he admitted that the plaintiff had supplied hollow blocks to the school. He also admitted that Head Master had given the supply order. He admitted that neither he nor defendant No.1 had made payment to the plaintiff.

26 In order to substantiate her case, the plaintiff had placed on record special power of attorney, which was executed by her in favour of her husband. Copy of the legal notice is Ext. PW1/D, which was issued by the plaintiff to defendant No.1. Reply to the aforesaid notice is Ext. PW1/F. Ext. R-1 is copy of resolution No.44, dated 19.1.2011,

whereby it has been stipulated that defendant No.2 had agreed to raise construction of four rooms with the consent of the SMC.

27 Most important document, which goes to the root of the case has been placed on record as Ext. DW2/A, copy of the undertaking/agreement as signed by defendant No.2, wherein it has been categorically stated by him that SMC had given the work of construction of four rooms in government school. He had undertaken that he shall complete the construction work within six months. He had assured that he shall purchase construction material to be utilized for the construction, after approving the same from SMC. He shall obtain cheque from the SMC and shall make payment to the concerned shops. He had further undertaken that during construction work, in case any payment remains outstanding, the same shall be made by defendant No.2. He shall remain bound by the undertaking and he shall be responsible in case any payment remains due qua construction of the building. It has been stipulated in Ext. DW2/A that SMC shall not be be liable to make any payment in any manner.

28 Ext. DW2/B is copy of resolution No. 44, dated 19.1.2011 and Ext. DW2/C is copy of resolution No. 46, dated 23.02.2011. Ext. DW2/D is copy of resolution No. 64, dated 4.11.2011, whereby a sum of Rs.15,000/- was paid to the defendant No.2. Ext. DW2/E is receipt of payment of Rs.15,000/- which has been duly signed by defendant No.2. Ext. DW2/F is copy of receipt amounting to Rs.2,00,000/- received by defendant No.2 from SMC, which has been duly signed by him. Record slip has been exhibited as Ext. DW2/G, reflecting various payments having been made to defendant No.2 through various cheques.

29 The only defence of defendant No.2/appellant is that he has categorically denied the case of the plaintiff on the ground that neither he is related to the plaintiff nor there is any privity of contract inter se the parties. The appellant has taken the stand that he was doing construction work on behalf of defendant No.1 and he has got no role to play with the plaintiff and whatever payment was due towards the plaintiff was to be made by defendant No.1 only. Precisely and primarily, defendant No.2/appellant has denied the case of the plaintiff and defendant No.1.

30 Perusal of the record especially copy of resolutions, as referred above, and document, Ext. DW2/A falsifies the case of defendant No.2 whereby he had undertaken that he himself would purchase the construction material after getting approval from SMC and he shall make the payment of construction material and the SMC shall not be liable to make payment to anyone and any payment of outstanding amount towards purchase of construction material shall be made by defendant No.2/appellant.

31 It is not in dispute that the hollow blocks have been used for constructing the rooms of the school. Even cross-examination of defendant No.2, as conducted by the plaintiff, would go to show that the plaintiff had supplied hollow blocks to defendant No.1, but since there was agreement between defendants No. 1 and 2 whereby it has been categorically stated that payment of the construction material shall be made by defendant No.2, therefore, defendant No.1 did not make payment to the plaintiff. Even witnesses of defendant No.1 have stated in their depositions that payment was made to defendant No.2 on account of purchase of hollow blocks. As per appellant/defendant No.2, he had not purchased the hollow blocks from defendant No.1

and defence of total denial has been taken. However, oral evidence when read in conjunction with the documentary evidence clearly establishes the case of the plaintiff, whereby it is proved that the plaintiff had supplied 1600 hollow blocks to defendant No.1 and on that account they are liable to pay Rs.44,320/- along with interest to the plaintiff.

32 This Court is of the considered opinion that the learned Courts below have rightly determined and adjudicated the point in controversy and since there are concurrent findings of fact, as rendered by the learned Courts below, therefore, this Court is in agreement with the same.

33 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.

34 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.”

35 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."

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

37 Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record and this Court does not find any 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.

38 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.

20th August, 2026
(*pankaj*)

(Romesh Verma)
Judge