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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 98/2023**

POONAM KUMAR

.....Appellant

Through: Mr. Yati Ranjan, Advocate

versus

H.M. ENTERPRISES

.....Respondent

Through: Mr. Prateek Narwar, Advocate

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

20.01.2025

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1. The present regular second appeal has been filed by the appellant impugning the judgment dated 04.01.2023 passed in RCA No. 20/2022 titled *Poonam Kumar vs. H.M. Enterprises*, whereby the learned First Appellate Court has dismissed the appeal and upheld the judgment and decree dated 14.12.2021 passed by the learned Trial Court in CS SCJ No.82358/2016 titled *H.M. Enterprises vs. Poonam Kumar*.
2. Briefly stated the facts are that a suit, titled *H.M Enterprises vs. Poonam Kumar*, was filed as Civil Suit No. 82358/2016 before the South District, Saket Court, New Delhi. The defendant, *H.M Enterprises*, had sought recovery of ₹89,440/- from the appellant, *Poonam Kumar*, alleging that the appellant failed to clear outstanding dues. Additionally, the defendant had claimed interest at the rate of 24% per annum on the amount due. The appellant, in response, has



denied any outstanding liability and contended that the entire payment had already been made in full and final settlement. The court framed key issues, including whether the defendant was entitled to recover the claimed amount and whether interest was payable on the said sum. The defendant submitted invoices and a Special Power of Attorney dated 29.07.2015 as part of the evidence, asserting that the appellant was contractually obligated to pay interest on delayed payments. During the proceedings, the appellant was given multiple opportunities to appear but failed to do so, leading to certain adverse inferences by the court. The defendant's replication was taken on record, and the court directed the defendant to submit evidence and witness affidavits within 15 days. Subsequently, the trial court ruled in favor of the defendant and decreed the suit, holding that the appellant was liable to pay the outstanding amount along with interest. Aggrieved by the decision, the appellant filed a first appeal before the Additional District Judge, which was dismissed on 04.01.2023 in an allegedly cursory manner without considering the substantial questions of law raised by the appellant. Consequently, the appellant has now filed the present second appeal challenging the orders of the lower courts.

3. This court has gone through the impugned judgment and finds that by no stretch of imagination can it be said that the impugned order gives rise to any substantial question of law within the meaning of Section 100 of the CPC. In this context, apropos Section 100 of the CPC, the Apex Court has, in ***Hero Vinoth (Minor) v. Seshammal***, AIR 2006 SC 223, relying on its earlier decision in ***Sir Chunilal V. Mehta***



&Sons Ltd v. Century Spinning & Manufacturing Co. Ltd, inter-alia, held on the indicia of a “substantial question of law”:

"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 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(2006) 5 SCC 545 AIR 1962 SC 1314 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.³ held that: (SCR pp.557-58) "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."



4. Further, it is to be noted that the High Court, when hearing a second appeal, cannot re-examine how the first appellate court reached its factual conclusions. While the first appellate court should generally respect the trial court's assessment of witness credibility, if it chooses to reject witnesses that the trial court found credible, this alone isn't grounds for the High Court to intervene in a second appeal - provided the first appellate court has given valid reasons for its decision. Also, when the evidence allows for two possible factual interpretations, the High Court must accept the interpretation chosen by the first appellate court in a second appeal. This principle cannot be deviated from. However, the High Court can intervene if the first appellate court's conclusions violate mandatory legal provisions, contradict established Supreme Court precedents, rely on evidence that should not have been admitted, or ignore crucial evidence that should have been considered.
5. Under Section 100 of the CPC, a second appeal before the High Court is maintainable only if it involves a substantial question of law. As per Section 100(1), an appeal shall lie to the High Court from every decree passed in appeal by a subordinate court only if the High Court is satisfied that the case involves such a question. This provision makes it clear that a second appeal cannot be entertained merely on questions of fact, and the existence of a substantial question of law is a mandatory prerequisite for invoking the High Court's jurisdiction. Furthermore, Section 100(4) provides that if the High Court is satisfied that a substantial question of law is involved, it must formulate the question explicitly before proceeding with the appeal. In the absence of such a question, the High Court has the authority to



dismiss the second appeal at the preliminary stage itself, without conducting a detailed examination of the merits of the case. This ensures that the second appellate jurisdiction is exercised only in cases where a legal question of significant importance arises, preventing unnecessary litigation over purely factual disputes.

6. In ***Guran Ditta v. RamDitta*** (1928) 30 BOMLR 1384, the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and it was *inter-alia* held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. Further, in ***Rimmalapudi Subba Rao v. NoonyVeeraju***, AIR1951MAD969, it was *inter-alia* held that:

“When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.”

7. Therefore, after careful consideration of established judicial precedents and settled legal principles regarding second appeals, this Court finds that the present regular second appeal is liable to be dismissed. This conclusion is reached because no substantial question of law has been raised that would warrant the this Court’s intervention



in second appeal. The arguments presented primarily revolve around factual determinations made by the first appellate court.

8. The findings of the first appellate court appear to be well-reasoned and based on proper appreciation of evidence. The court below has given cogent reasons for its conclusions and has not ignored any material evidence. The appellant has essentially sought to reargue factual matters and reassessment of evidence, which is not permissible because the mere fact that another view of the evidence might be possible is not sufficient ground for interference in the second appeal when the lower appellate court has arrived at reasonable conclusions based on the evidence before it. Therefore, in accordance with Section 100 of the Civil Procedure Code and the established parameters for exercise of jurisdiction in the second appeal, this appeal is liable to be dismissed.
9. In view of the above, the present appeal with pending applications, if any, is dismissed.

DINESH KUMAR SHARMA, J

JANUARY 20, 2025
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