

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 350 of 2022

Date of decision: 19.08.2026

Sonam Dawa

...Appellant.

Versus

Bishan Lal

...Respondent.

Coram:

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

Whether approved for reporting?¹

For the appellant : Ms.Dhanwanti, Advocate, vice counsel
Mr. Sanjay Bhardwaj, Advocate.

For the respondent : Mr. Sudhir Bhatnagar, Advocate.

Romesh Verma, Judge (Oral):

The instant appeal arises out of the judgment and decree passed by the learned Additional District Judge, Kullu, Himachal Pradesh, dated 22.08.2022, whereby the appeal filed by the present appellant/defendant was dismissed, affirming the judgment and decree as passed by the learned Senior Civil Judge, Kullu, dated 20.09.2019, whereby the suit filed by the respondent/plaintiff for recovery of Rs.2,20,000/- with interest at the rate of 9% per annum was decreed.

2. The facts, as emerge in the present case, are that the respondent/plaintiff filed a suit for recovery to the tune of Rs.2,99,200/, i.e., Rs.2,20,000/- as principal and Rs.79,200/- as interest calculated at the rate of 12% per annum from 02.04.2011 up to the date of

Whether reporters of Local Papers may be allowed to see the judgment?

institution of the suit, along with pendente lite and future interest at the rate of 12% per annum from the date of institution of the suit till realisation, along with the costs of the suit.

3. As per the case as set up by the plaintiff on 29.04.2011, a compromise was entered into between the plaintiff and the defendant, whereby the defendant had promised the plaintiff to arrange a path leading from the road to the land of the plaintiff before 15.09.2011 from the person whose land is situated in front of the land of the plaintiff for a total sale consideration of Rs. 3,50,000/-. According to the plaintiff, he paid a sum of Rs. 2,20,000/- as advance to the defendant for the purchase of the land. The balance amount of Rs. 1,30,000/- was to be paid by the plaintiff to the defendant in the event the defendant remained successful in procuring the path for the plaintiff on or before 15.09.2011. The defendant failed to procure the said path for the plaintiff despite making assurances and commitments. On account of the failure to get the path purchased in favour of the plaintiff and in order to discharge the liability, the defendant issued and delivered a cheque dated 02.04.2011 bearing number 605764 amounting to Rs.2,20,000/-, drawn on Kangra Central Cooperative Bank Limited, Gandhinagar Branch against account number 02874, to the plaintiff, with the specific assurance that sufficient funds were lying in the account of the defendant. The plaintiff presented the cheque for encashment before the banker of the defendant. The same was

dishonoured and returned by the bank with the endorsement "insufficient funds". Thereafter, the plaintiff issued a legal notice to the defendant on 21.09.2011, which was sent through registered post on 22.09.2011, calling upon the defendant to make payment of the aforesaid amount. Though the notice was duly received by the defendant, but he failed to pay any amount even after receiving the notice issued by the plaintiff.

4. The plaintiff has averred in the plaint that he filed a complaint under Section 138 of the Negotiable Instruments Act against the defendant, which was dismissed by the learned Special Judicial Magistrate, Kullu. Thereafter, an appeal was preferred by the plaintiff, which is pending before the Court of the learned Sessions Judge, Kullu. Thereafter, various requests were made to the defendant to make the payment, but on one pretext or the other, the defendant failed to pay the same.

5. Therefore, under such circumstances, the plaintiff filed the suit for recovery of Rs. 2,99,200/- along with interest at the rate of 12% per annum from 02.04.2011 till the filing of the suit, along with the costs of the suit and also prayed for a decree for pendente lite and future interest at the rate of 12% per annum till payment is made in favour of the plaintiff and against the defendant.

6. The suit was duly contested by the defendant by filing written statement, wherein preliminary objections with respect to

maintainability, suppression of material facts, locus standi, etc., were taken. On merits, all the averments made in the plaint were specifically refuted and denied. It was stated in the written statement that the defendant was merely an agent/mediator between the plaintiff and landowner Davinder Singh, from whom the plaintiff had purchased land measuring 0-7-0 bigha at Mohal, Kothi, Khokhan, Tehsil and District Kullu, H.P., vide registered sale deed No.742/2010 dated 21.04.2010. It was stated by the defendant that as per the terms and conditions of the sale deed, landowner Davinder Singh had provided 8 feet wide path from Gadouri link road to the plot of the plaintiff. Further, the plaintiff had to acquire a path from one Fauji, for which the defendant acted as an agent/mediator.

7. As per the oral agreement amongst the plaintiff Bishan Lal, landowner Davinder Singh and Fauji, the plaintiff has to pay a sum of Rs.3,50,000/- to Fauji for the path leading from Gadouri link road to the plot of the plaintiff Bishan Lal through the land of Fauji and Davinder Singh. The defendant stated that the plaintiff had not paid a sum of Rs.2,20,000/- to the defendant as per the oral agreement, for which the defendant had issued a security cheque to the plaintiff. The deal did not materialise. As such, neither the plaintiff had paid the money to Fauji, nor the said person gave land for the path to the plaintiff. The defendant, being an agent/mediator, had issued a security cheque to the tune of Rs.2,20,000/- to the plaintiff for the

maturity of the aforesaid deal. It was stated that though a complaint under Section 138 of the Negotiable Instruments Act was instituted by the plaintiff against the defendant, but the same came to be dismissed. All the averments as made in the plaint were refuted and denied by the defendant.

8. The plaintiff filed replication, whereby all the averments made in the plaint were reiterated.

9. The learned trial Court framed the issues on 17.08.2015 in the following manner:

1. Whether the plaintiff is entitled to recover a sum of Rs.2,99,200/- i.e. Rs.2,20,000/- as principal amount and Rs.79,220/- as interest calculated @ 12% per annum from 2-4-2011 to the date of institution of the suit and also pendente lite and future interest @ 12% per annum from the date of institution of the suit till realization, as prayed? OPP
2. Whether the suit is not maintainable, as alleged? OPD
3. Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts from this Court, as alleged? OPD
4. Whether the plaintiff has no locus standi to file the present suit, as alleged? OPD

5. Relief.

10. The learned trial Court directed the respective parties to lead evidence in support of their contentions and vide its judgment and decree dated 20.09.2019, learned Senior Civil Judge, Kullu, District Kullu, H.P., partly decreed the suit filed by the plaintiff, holding the plaintiff entitled to decree for recovery of Rs. 2,20,000/- with interest at the rate of 9% per annum from the defendant from the date of filing of the suit till its realisation.

11. Feeling aggrieved, the defendant preferred an appeal before the Court of the learned Additional District Judge, Kullu, on 11.11.2019.

12. Learned first appellate Court, vide its impugned judgment and decree dated 22.08.2022, dismissed the appeal filed by the defendant and affirmed the findings returned by the learned trial Court.

13. Still feeling dissatisfied, the defendant has approached this Court by invoking the provisions of Section 100 of the Code of Civil Procedure.

14. It is contended by Ms. Dhanwanti, learned counsel for the appellant/defendant, that the impugned judgments and decrees as passed by the learned Courts below are erroneous and not in accordance with law. She submitted that learned Courts below have failed to appreciate the oral as well as documentary evidence on

record, resulting in grave prejudice to the rights of the appellant. She further submitted that after accepting the present appeal, the suit filed by the respondent/plaintiff is liable to be dismissed.

15. On the other hand, Mr. Sudhir Bhatnagar, learned counsel for the respondent/plaintiff, has defended the impugned judgments and decrees. He submitted that while invoking the provisions of Section 100 of the CPC, this Court will not interfere with concurrent findings of fact. He submitted that the judgments and decrees passed by learned Courts below are legal, valid, and sustainable and do not call for any interference.

16. I have heard the learned counsel for the parties and carefully gone through the material placed on record.

17. With the consent of the parties, the case is heard finally on the following substantial question of law:

Whether the impugned judgments and decrees passed by the learned Courts below are the result of misreading, misinterpretation as well as misconstruing the oral and documentary evidence placed on record by the parties?

18. The plaintiff approached the trial Court for recovery of Rs.2,99,200/- along with interest at the rate of 12% per annum from 02.04.2011 against the defendant on the ground that on 29.04.2011, a compromise was entered into between the parties, whereby the

defendant had agreed and promised the plaintiff to get a path leading from the road to the land of the plaintiff on or before 15.09.2011 from the person whose land was in front of the land of the plaintiff for a total sale consideration of Rs.3,50,000/-.The plaintiff paid a sum of Rs.2,20,000/- as advance to the defendant and the balance amount was to be paid by the plaintiff in case the defendant remained successful in procuring the said path for the plaintiff on or before 15.09.2011.The defendant failed to arrange the path for the plaintiff as per his commitment. In order to discharge his liability, the defendant issued a cheque dated 02.04.2011 in favour of the plaintiff. However, when the said cheque was presented for encashment, the same was returned with the remarks "insufficient funds". Though it is the case of the plaintiff that he instituted proceedings under Section 138 of the Negotiable Instruments Act before the learned Special Judicial Magistrate, Kullu, but the same came to be dismissed.

19. The defendant has vehemently refuted and denied all the averments made in the plaint, denying that he received a sum of Rs.2,20,000/- from the plaintiff.

20. The plaintiff, in order to substantiate his case, examined himself as PW-1. The plaintiff placed on record his affidavit. In his affidavit, he stated that the relations between the parties were cordial and they were known to each other. As per the plaintiff, on 29.04.2011, a compromise was entered into between the parties, whereby the

defendant agreed and promised to procure for him a path leading from the road to his land on or before 15.09.2011 from the person whose land is situated in front of the land of the plaintiff for a total sale consideration of Rs.3,50,000/-. He paid a sum of Rs.2,20,000/- as advance to the defendant for the purchase of the said path. The balance amount of Rs. 1,30,000/- was to be paid by the plaintiff to the defendant in the event the defendant remained successful in getting the path on or before 15.09.2011. The defendant failed to procure the said path for the plaintiff as per his promise. In order to discharge the liability, the defendant issued a cheque dated 02.04.2011 amounting to Rs.2,20,000/- in favour of the plaintiff. However, the same was dishonoured. Thereafter, a legal notice was sent through registered post to the defendant, but despite receipt of the notice, the defendant failed to pay the said amount to the plaintiff.

21. In his cross-examination, the plaintiff stated that he knew the defendant since 2010. He stated that he is employed in the Education Department. He deposed that he gave Rs. 2,20,000/- to the defendant in cash. He stated that he borrowed a sum of Rs. 1,00,000/- from his sister, some amount from relatives and withdrew certain amount from his own bank account. He stated that he paid the money to the defendant in order to acquire the path from Kavinder Fauji. He instituted proceedings under Section 138 of the Negotiable Instruments Act, however, the same were dismissed. In his cross-

examination, no suggestion was put by the defendant that any amount was paid by the plaintiff to the defendant or that any cheque was issued by the defendant to discharge his liability in the present proceedings. In the cross-examination, the plaintiff was not confronted with the assertion that no amount was ever paid by the plaintiff to the defendant.

22. PW-2 is the statement of Shri Sohan Lal. In his deposition, he stated that he knew the parties. He stated that a compromise was effected between the parties and as per the settlement, the defendant agreed that for a sum of Rs. 3,50,000/-, he would provide a path to the plaintiff. As per the settlement, the plaintiff had given a sum of Rs.2,20,000/- to the defendant. He stated that the defendant was unable to get the path in favour of the plaintiff. He stated that he appended his signatures on Ext.PW-2/A at the portion encircled in red. As per PW-2, on the very same day when the compromise was effected, the defendant handed over a cheque to the plaintiff. The said cheque was given on the basis of the compromise, wherein it was stipulated that in case the defendant failed to provide the path to the plaintiff, in that event the plaintiff would be entitled to present the cheque before the bank.

23. In his cross-examination, he stated that Ext.PW-2/A was written in the chamber of Shri R.R. Rana, Advocate. He stated that he, along with witness Surender, appended their signatures on Ext.PW-

2/A. He admitted that the complaint instituted by the plaintiff under Section 138 of the Negotiable Instruments Act was dismissed by the learned Special Judicial Magistrate, Kullu.

24. PW-3 is the statement of Smt. Neeta Kashyap, Record Keeper, Court of the learned Chief Judicial Magistrate, Kullu. She produced Ext. PW-3/B, Ext.PW-3/C, Ext.PW-3/D and Ext.PW-3/E.

25. PW-4 is the statement of Shri Revat Rana, Advocate. In his testimony, he stated that the compromise Ext.PW-2/A was drafted by him. He appended his signatures over the same. As per PW-4, Ext.PW-2/A was drafted at the instance of the plaintiff. After drafting the same, the contents were read over to both the parties and on admitting the same to be correct, both parties appended their signatures in the presence of witnesses Sohan Lal and Surender Kumar. In his cross-examination, he stated that both parties put their signatures in his presence.

26. PW-5 is the statement of Shri Surender Pal, Bar Clerk, District Courts, Kullu. He stated that for the last 10 to 15 years, he has been working as a Munshi with PW-4, Shri Revat Rana, Advocate. He stated that compromise Ext.PW-2/A was prepared on the instructions of the parties. As per PW-5, the contents of Ext.PW-2/A were read over to both parties and after acknowledging the contents to be correct, it was duly signed by them.

27. In his cross-examination, he stated that the compromise Ext.PW-2/A was written in the office of Shri R.R. Rana, Advocate. As per this witness, he appended his signature at the end. He denied the suggestion that the compromise Ext.PW-2/A was prepared solely at the instance of Bishan Lal and the witnesses and he further denied that he is making a false statement.

28. In order to rebut the case of the plaintiff, the defendant filed his affidavit, Ext.DW-1/A. In his affidavit, he reiterated all the averments as made in the written statement.

29. DW-1 In his cross-examination stated that he knew the plaintiff for the last 5 to 6 years. He is an agriculturist by profession. He stated that he introduced the plaintiff to the owner of the land. As per DW-1, the owner of the land was Devinder. He admitted that between the land of Davinder and that of the plaintiff, the land of Fauji is situated. Stated that he did not execute any transaction between the plaintiff and Davinder. He admitted that he had told the plaintiff to provide a path to him from the land of Fauji. Self stated that a sum of Rs.1,30,000/- was to be given by the plaintiff (with respect to the passage), and Rs.2,20,000/- was to be given by landowner Davinder for the passage. As per DW-1, a sum of Rs.3,50,000/- was to be given to landowner Fauji, which was not given by the plaintiff. He denied that out of total sale consideration of Rs.3,50,000/-, plaintiff Bishan Lal had paid a sum of Rs. 2,20,000/- to him. He denied that in order to provide

a path to the plaintiff, compromise deed Ext.PW-2/A was effected between the parties. He denied that he had appended his signatures over Ext.PW-2/A. He admitted that he appended his signatures on cheque Ext.PW-3/A. He stated that the plaintiff forcibly obtained cheque Ext.PW-3/A from him. DW-1 denied that he had handed over cheque to the plaintiff of his own free accord. He denied that the remaining amount of Rs.1,30,000/- was to be paid by the plaintiff, Bishan Lal, to the defendant in lieu of the path. He denied that when he did not provide the path to the plaintiff, he gave the cheque to the plaintiff. He denied that till today, he did not provide the passage or the path to the plaintiff.

30. The copy of the compromise, Ext.PW-2/A, placed on record, clearly stipulates that the defendant agreed to provide a path to the plaintiff from the landowner whose land is situated adjacent to the land of the plaintiff. As per the said compromise, the plaintiff agreed to pay a sum of Rs.3,50,000/- to the defendant and in paragraph 4 of the deed, it has been stated that the defendant received a sum of Rs.2,20,000/- from the plaintiff in order to provide the path. The compromise Ext PW-2/A has been duly signed by the respective parties, namely Bishan Lal and Sonam Dawa and witnessed by Shri Sohan Lal and Surender. The cheque of Rs.2,20,000/- has been proved as Ext.PW-3/A. The copy of the legal notice is Ext.PW-3/C and its acknowledgment is Ext.PW-3/E.

31. The plaintiff has been able to establish and prove his case, on the strength of the settlement/compromise (Ext. PW-2/A) executed between the parties, that a compromise was entered into between the parties to the effect that the defendant would provide a path to the plaintiff from the landowner whose land was situated adjacent to the land of the plaintiff. For that purpose, it was agreed that the sale consideration amount would be paid by the plaintiff to the defendant and out of the total amount, a sum of Rs.2,20,000/- was paid by the plaintiff to the defendant. There is a clear stipulation in the compromise that in case the defendant fails to provide the path to the plaintiff, in that event, the cheque issued by the defendant can be presented by the plaintiff for recovery of the amount paid to the defendant. In order to prove Ext.PW-3/A, the plaintiff examined PW-3, Smt. Neeta Kashyap, Record Keeper, CJM Court, Kullu.

32. The oral as well as documentary evidence placed on record establishes the case of the plaintiff that on the basis of compromise Ext.PW-2/A, the defendant agreed to provide a path to the plaintiff, received a sum of Rs. 2,20,000/- for the said purpose and acknowledged the receipt thereof in the compromise deed.

33. PW-2 and PW-5, the attesting witnesses to the compromise, have duly proved the case of the plaintiff by deposing that the parties entered into a compromise and signed the document after fully understanding its contents.

34. Based on Ext.PW-2/A, the plaintiff has established that a sum of Rs.2,20,000/- was paid to the defendant and when the cheque was presented for payment, it was dishonoured with the endorsement "insufficient funds", constraining the plaintiff to institute the present suit.

35. Once the plaintiff has been able to establish payment of Rs.2,20,000/- to the defendant, in conjunction with the oral and documentary evidence on record, both learned Courts below have concurrently come to the conclusion that the plaintiff is entitled to recover the amount of Rs.2,20,000/- from the defendant. In the cross-examination of plaintiff, no suggestion has been put to him by the defendant that plaintiff did not pay any amount to him. It was not suggested to PW-1 that no cheque was issued by defendant in order to discharge his liability. There is not even a single suggestion to falsify the case of the plaintiff that no money was paid by the plaintiff to the defendant.

36. This Court is of the considered opinion that both learned Courts below appreciated the point in controversy in accordance with law and the findings returned by both the Courts below do not suffer from illegality, perversity or jurisdictional error.

37. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 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 xxxxxx

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."*

38. Similarly, 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.A2) 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 fulfill his obligation and accept performance when the time for performance arrives."

39. No other point was raised by the learned counsel for the parties.

40. Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record. The substantial question of law is answered accordingly.

41. 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.

(Romesh Verma)
Judge

19thAugust, 2026.
(vt)