

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 134 of 2018

Date of decision: 22.04.2026

The Secretary HPPWD & others

...Appellants.

Versus

Roshan Lal & another

...Respondents.

Coram:

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

*Whether approved for reporting?*¹

For the appellants : Mr. Manish Thakur, Deputy Advocate General.

For the respondents : Mr. Ravinder Singh Jaswal, Advocate, for respondent No.1.

Respondent No.2 proceeded against ex-parte vide order dated 12.06.2018.

Romesh Verma, Judge (Oral):

The present appeal arises out of the judgment and decree dated 10.01.2017 as passed by the learned Additional District Judge-I, Shimla, H.P., whereby the appeal preferred by the present appellants/State has been dismissed and the judgment and decree as passed by the learned Civil Judge, Jr. Division, Court No.4, Shimla, HP dated 26.09.2015 has been affirmed, whereby, the suit filed by the plaintiff/respondent for recovery of Rs.2,04,031/- and mandatory injunction was decreed.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

2. The brief facts of the case are that the respondent/plaintiff filed a suit for damages to the tune of Rs.2,04,031/- and for mandatory injunction against the appellants/defendants and one Sh. Kirpa Ram. As per the averments made in the plaint, it has been stated that the plaintiff is the owner in possession of a four-storeyed building, including a basement, constructed over the land comprised in Khata No. 30 min, Khatauni No. 149, Khasra Nos. 17 to 19 and 21, situated at Muhal Panthaghati, Tehsil and District Shimla, H.P.

3. The defendants commenced the work of construction of link road known as Shiv Mandir-lower Panthaghati Road, which diverts from the main road known as NH-22 i.e. Vikas Nagar-Dhalli Road. The construction of the said road was undertaken by the defendants with the assistance of the contractor. The defendants and the contractor deployed heavy machinery for the purpose of cutting land and removal of the debris. The said link road passes through the property of defendant No.4, which is situated just below to the construction of the building of the plaintiff thereby resulting in severance of holdings. Without taking much care to the adjoining land and construction, work of cutting of the land, removal of debris and all other acts necessary for the construction of the road were taken

in such a manner, which has caused great damage to the adjoining property including the building of the plaintiff. The defendant No.4 removed the stones through the contractor of defendants No.1 to 3 from that land which is just below the construction of the plaintiff, caused further destruction to his property. Without taking care and caution and without the implied and express consent of the plaintiff, defendant No.4 allowed defendants No.1 to 3 to construct the road and further removal of the stones of the land which is just below the construction of the plaintiff, which caused great damage to the basement and the sewerage tank of the plaintiff's construction.

4. It was further averred that the construction work was started by the defendants by deploying the heavy machinery, such as JCB for cutting of the road, which was carried out in a highly negligent and unscientific manner. Though, on the spot, plaintiff raised the objections qua the said construction but the defendants failed to accede to the request as made by him. On submission of written objections filed by the plaintiff to the defendants, the officials of the defendants assured for the construction of the retaining wall to avoid any damage to the construction of the plaintiff. Despite making of the assurances, no steps were taken by the defendants to protect the land from

the damage neither any preventive measures were taken by the department so as to preserve the remaining land and the property of the plaintiff.

5. No proper and effective steps were taken by the defendants to raise the retaining walls or the breast wall to protect the remaining land and prevent landslides during the rain, as the hillside has given way, thereby causing huge slips, cracks in the basement floor, and damage to the sewerage tank of the construction.

6. That, due to the negligence on the part of the defendants, the construction of the plaintiff suffered serious injurious effects due to the slipping of land during the heavy rainy season. The plaintiff served the department by issuing the necessary legal notice under Section 80 of CPC for the redressal of the grievance, but no steps were taken by the defendants. Therefore, the plaintiff filed a suit against the defendants/appellants, with the prayer to compensate the plaintiff to the tune of Rs. 2,04,031/- for the reconstruction of the septic tank and for providing retaining structure along with the base of the said construction.

7. Further, by way of a mandatory injunction, a prayer was made for the construction of a retaining wall or a breast wall

along with the hillside road to protect the hill strata from sliding and causing further damage to the property/land of the plaintiff.

8. The suit was contested by the defendants and separate written statements were filed by defendants No. 1 to 3 and defendant No. 4. The appellants/State, in their written statement, raised various objections with respect to maintainability, cause of action and estoppel.

9. On merits, all the averments as made in the plaint were refuted and denied. It was denied that heavy machineries were deployed for cutting or that any damage was caused to the land and property of the plaintiff on account of unscientific construction. It was averred that the road does not pass through the property of defendant No. 4 bearing Khasra No. 45, which is far away from the road, but passes through Khasra No. 11, which is adjoining to the plot of defendant No. 4. It was further stated that no cutting work was undertaken through the property of the plaintiff, therefore, no question arises for the payment of any damages to the plaintiff.

10. It was also denied that any assurance was made by the officials of the department for the construction of a retaining wall, as the department had not damaged any part of the property

of the plaintiff. Further, it was stated that the slided land belongs to defendant No. 4, and that the land of the plaintiff is far from the concerned road. The defendants No. 1 to 3 prayed for the dismissal of the suit filed by the plaintiffs.

11. Defendant No. 4 filed separate written statement by denying the averments made in the plaint. It was stated that the road does not pass below the plaintiff's building. It was further stated that defendant No. 4 has neither actively participated in the work nor he was present at the site while the work was in progress.

12. It was denied that, during the construction of the road, any work was carried out in such a manner as to cause damage to the plaintiff's property. As per the case of the defendants, the distance between the plaintiff's building and the road is about 70 feet, and in between there exists the plaintiff's plot and some portion of other land. It was stated that no damage was caused to the plaintiff, therefore, the suit is liable to be rejected.

13. The plaintiff filed replication to the written statement as filed by the defendants.

14. The learned trial Court framed the issues in the matter on 08.12.2011 in the following manner:

1. Whether the plaintiff is entitled for a decree of recovery of Rs. 2,04,031/-, as alleged ? OPP
2. Whether the plaintiff is entitled for a decree of mandatory injunction, as alleged ? OPP
3. Whether the suit of the plaintiff is not maintainable, as alleged ? OPD
4. Whether the plaintiff has no cause of action to file the present suit, as alleged ? OPD
5. Whether the plaintiff has filed the present suit with mala fide intention, as alleged ? OPD

15. The learned trial Court directed both parties to adduce evidence in support of their contentions and finally, vide its judgment and decree dated 26.09.2015, partly decreed the suit against the defendants No.1 to 3 by passing a decree for recovery of damages to the tune of Rs. 2,04,031/- in favour of the plaintiff and further passing a decree of mandatory injunction directing the defendants to construct a retaining wall to support the lower strata of soil below the plaintiff's land comprised in Khasra Nos. 17 to 19 and 21.

16. Feeling dissatisfied, defendants No. 1 to 3/State preferred an appeal before the Court of the learned Additional District Judge-I, Shimla on 23.03.2016. Defendant No. 4 did not file any appeal against the findings as returned by the learned trial Court and he accepted the same.

17. The learned First Appellate Court, vide its judgment and decree dated 10.01.2017, dismissed the appeal as filed by the defendants/appellants and affirmed the findings returned by the learned trial Court.

18. Still feeling aggrieved, the State has filed the present Regular Second Appeal against the impugned judgments and decrees passed by the learned Courts below.

19. It is contended by Mr. Manish Thakur, learned Deputy Advocate General, that the findings as returned by the learned Courts below are erroneous and liable to be quashed and set aside. He further submits that no damage was caused to the plaintiff, therefore, the decree passed by the Courts below granting decree for recovery of damages and further issuing a decree of mandatory injunction could not have been passed. He also submits that the Courts below have not properly appreciated the material evidence placed on record.

20. On the other hand, Mr. Ravinder Singh Jaswal, Advocate, has defended the judgments and decrees passed by the learned Courts below and has categorically stated that there are concurrent findings of fact by the learned Courts below, which do not call for any interference in the present proceedings. He

further submits that no substantial question of law arises in the present case. Consequently, the appeal deserves to be rejected.

21. I have heard the learned counsel for the parties and have gone through the case file.

22. This appeal was admitted by this Court on 08.08.2018 on following substantial question of law:

Whether the findings of the learned Courts below are perverse inasmuch as the same have been rendered without taking into consideration the pleadings as also the evidence on record ?

23. The precise case of the plaintiff, which was filed before the learned trial Court is that on account of the damages which was caused to the structure and the land of the plaintiff, he is entitled for damages and decree for mandatory injunction.

24. In order to support his contention, the plaintiff has placed on record the technical report Ext. PW-3/A, which was prepared by Sh. J.K. Mahindroo, Executive Engineer (retired), H.P. PWD Department. In his report, he has stated that he inspected the site and assessed the damage caused to the property of the present plaintiff, which was caused by the H.P. Public Works Department authorities and its contractor during the construction of the road.

25. The said engineer took photographs of the spot and as per the report, the damage to the property is visible. The photographs have also been appended with the report as Ext. PW-3/B-1 to B-11. In his report, PW-3, Er. J.K. Mahindroo, has stated that extensive damage to the property of the owner has been caused due to the cutting of the road by the H.P. PWD authorities. He has further stated that the damage to the land of the owners is only in the reaches where the H.P. PWD authorities have carried out cuttings, which is not due to natural calamities.

26. As per the report, this fact is justified from the condition of the places, where no cutting work has been done, the profile of land is in its original shape, and damage to the land was not seen/observed where the widening has not been carried out.

27. After inspection of the spot by the expert PW-3, he has assessed the amount in the following manner:-

“i) That the land below the house of Sh. Roshan Lal has been badly damaged due to cutting over the land of owners on road has damaged the septic tank of size $10 \times 10 \times 7 = 700$ cft or 19821 liter capacity which can be reconstructed @ Rs 5/- liter at the present rates involving Rs 99105.00.

ii) That a retaining wall below the base of the basement is to be constructed to protect the house of Sh Roshan Lal from impending danger in a stretch of nearly 50 ft length along the base of the house for which the cost be as per the details given below:-

a) CC 1:6:12 in foundation $4.8 \times 0.5 \times 50 = 120$ cft or 3.4 cum @ Rs 1942.50 = Rs 6604.00b

b) RR masonry in CM 1:6 is $[4.2+2]^{1\frac{1}{2}} \times 8 \times 50 = 1240$ cft or 35.11 Cum @ Rs 2222.00 = Rs 78014.00

c) Repair to side drain Ls = Rs 5000.00

Add 24 % cost index (increase in consumer price index since 2009) on Items a to b i.e. on Rs 84618 = Rs 20308.00

Total = Rs 1,04,926.00/-"

28. In order to corroborate the said report, PW-3 Er. J.K. Mahindroo has entered into the witness box. Though he was thoroughly cross-examined, the defendants failed to extract anything from his testimony.

29. The plaintiff has deposed in support of his case by filing affidavit Ext. PW-1/A. In his evidence by way of affidavit, all the averments made in the plaint have been reiterated. It has been stated that on account of the deployment of heavy machinery and indiscriminate cutting, the soil strata was lost and, due to the use of heavy machinery and indiscriminate cutting, the land started slipping down, which endangered the construction of the deponent. The landslide reached the basement of his building and disturbed the strata below the base of his floor, and damaged the septic tank. Big and deep cracks in the basement as well as the septic tank can be seen.

30. He has further stated that no proper and effective steps were taken by the defendants to raise retaining walls or breast walls to protect the land and avoid landslides during the rainy season, as the hillside had given way, thereby causing huge slips, cracks in the basement floor, and damage to the sewerage tank of the plaintiff's construction.

31. In the cross-examination, he denied all the allegations made by the defendants. He denied that he did not suffer any damage and that the suit was filed merely to harass the defendants.

32. In order to corroborate its case, the plaintiff has examined PW-2 Desh Raj. He has also supported the case of the plaintiff. He stated that he is a tenant of the plaintiff at Shakti Bihar, Panthaghati, near Shiv Mandir, Kusumpti, Shimla-9. He stated that the defendants started the construction work of the link road known as Shiv Mandir–Lower Panthaghati road, which diverts from the main road known as NH-22 i.e. Vikas Nagar–Dhalli Road. The defendants, at the time of construction of the road, used heavy machinery for the purpose of cutting the land and removal of debris. No proper steps were taken by the defendants to preserve the land and structure of the plaintiff, and

on that account, cracks appeared on the basement floor and the sewerage tank of the plaintiff's construction was damaged.

33. In the cross-examination, he denied that he was deposing falsely.

34. In order to rebut the case of the plaintiff, the defendant examined Sh. Kuldeep as DW-1, who was working as Junior Engineer at the relevant time of construction of the road. In his deposition, he stated that heavy machinery was not deployed while constructing the road, and that the construction was carried out with the help of light machinery by the department.

35. Further, it has been deposed that the house of the plaintiff is at a considerable distance from the place, where the road has been constructed. He further stated that the plaintiff did not suffer any loss or damage, and that the suit has been filed without any basis or cause of action.

36. In his cross-examination, he admitted that while constructing the road, no retaining wall was erected by the department. He further admitted that the road passes adjacent to the house of the plaintiff. He denied that any assurance was given by the officers of the department that the plaintiff would be duly compensated for the damages and loss suffered by him.

37. Defendant No. 4 has entered into the witness box and tendered his evidence by way of affidavit Ext. DW-2/A. He has stated in his deposition that there are two blocks between the link road and the building of the plaintiff, hence, no question of damage arises at all. He stated that, besides the building of the plaintiff, there exist three to four buildings, and the said buildings are on the upper side.

38. All the occupants of the buildings, including the plaintiff, have laid down a drain on the defendant's plot in an unauthorized manner, which carries the entire dirty water from the kitchen and bathrooms of the aforesaid buildings and falls upon the walls of defendant No. 4, resulting in huge loss to the plot and erosion of the soil. He stated that it is not the plaintiff, but defendant No. 4 whose plot has been damaged by the discharge of dirty water on his plot.

39. In his cross-examination, he stated that when the road was constructed, no consent was obtained from the PWD for raising the construction thereof. He denied that, in collusion with the PWD contractor, he extracted stones from below the plaintiff's plot and caused damage to his property. He stated that it is not

the plaintiff, but defendant No. 4 who suffered damages at the hands of the plaintiff.

40. In order to show his ownership of the property, the plaintiff has placed on record a copy of the Jamabandi for the year 2005–06 Ext. PW-1/E. The same reveals the ownership and possession of the plaintiff and also reflects the entry of “Gair Mumkin Makan Pacca Char Manjila.” The plaintiff issued a legal notice under Section 80 of the CPC for the redressal of his grievances, with the prayer for construction of a retaining wall below the plaintiff’s building, which has been placed on record as Ext. PW-1/C.

41. The technical report Ext. PW-3/A categorically holds that extensive damage was caused to the property of the plaintiff on account of the cutting of the road by H.P. PWD authorities. In his report technical expert has categorically stated that the damage was not due to any natural calamity, and this fact is justified from the condition of the places where no cutting work has been done; the profile of the land is in its original shape, and damage to the land was not seen or observed.

42. The said report is duly supported by the photographs appended thereto. The technical report clearly demonstrates that

the plaintiff's land was damaged by the defendants during the construction of the road and that he has sustained losses and damages. Coupled with the technical report Ext. PW-3/A, the oral testimonies of the plaintiff, PW-2, and PW-3 clearly prove that while raising the construction of the road, damage was caused on account of unscientific construction by the defendants. The plaintiff has been able to establish and prove that he sustained losses and damages on account of reckless and unscientific excavation and construction by deploying heavy machinery. The photographs clearly show that the plaintiff's building is hanging in the air and cracks have appeared in parts of the property.

43. Both the Courts below have rightly taken into consideration the oral as well as documentary documents placed on record and rightly came to the conclusion that on account of the negligence of the defendants, the plaintiff sustained losses/damages.

44. There are concurrent findings of facts by the Courts below, which do not call for any interference as plaintiff has been able to prove and establish the damages caused to the property/land owned by him.

45. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 of CPC in **Civil Appeal Nos.**

2843/2844/2010, titled **Nazir Mohamed Vs. J. Kamala & ors** decided on 27.08.2020, held that a second appeal only lies on a substantial question of law. It is not open to re-agitate facts or to call upon the High Court to re-analyze or re-appreciate evidence in a second appeal. Section 100 of the Code of Civil Procedure restricts the right of second appeal only to those cases, where a substantial question of law is involved. Relevant paras of the aforesaid judgment read as under:-

“25. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the Court cannot expand the scope of the appeal. It was not open to the Respondent-Plaintiff to re-agitate facts or to call upon the High Court to reanalyze or re-appreciate evidence in a Second Appeal.

26. Section 100 of the CPC, as amended, restricts the right of second appeal, to only those cases, where a substantial question of law is involved. The existence of a “substantial question of law” is the sine qua non for the exercise of jurisdiction under Section 100 of the CPC.”

46. A question of law must arise from the pleadings. It becomes substantial question of law, if it is debatable, not previously settled by law of land or any binding precedent, must have a material bearing on the decision of the case. A pure finding of fact is not open to challenge in second appeal even if appreciation of evidence is palpably erroneous & finding of fact incorrect.

“29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. 1 , where this Court held:-

"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."

30. In *Hero Vinoth v. Seshammal 2*, this Court referred to and relied upon *Chunilal v. Mehta and Sons (supra)* and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

31. The relevant paragraphs of the judgment of this Court in *Hero Vinoth (supra)* are set out hereinbelow:-

*"21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with- technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133 (1) (a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta [(1927-28) 515 IA 235 : AIR 1928 PC 172]* 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 their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314]* the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi**

Subba Rao v. Noony Veeraju [AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557)

“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.”

32. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

33. To be a question of law “involved 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 Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

34. Where no such question of law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, as in this case, a second appeal cannot be entertained, as held by this Court in *Panchagopal Barua v. Vinesh Chandra Goswami*.

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from *Santosh Hazari v. Purushottam Tiwari*.

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in *Ramchandra v. Ramalingam*. 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.

37. The principles relating to Section 100 CPC relevant for this case may be summarised thus :

(I) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to 14 such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

47. In **Hero Vinoth (minor) vs. Seshammal, (2006) 5 SCC**

545, the Hon'ble Supreme Court 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 24 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."

48. No other point has been urged by the respective counsel for the parties. The substantial question of law is answered accordingly.

49. Consequently, the present appeal being devoid of any merits deserves to be dismissed. Ordered accordingly.

Pending miscellaneous application(s), if any, shall also stand disposed off.

**(Romesh Verma)
Judge**

April 22, 2026.
(Nisha)