IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 12th OF FEBRUARY, 2026

SECOND APPEAL No. 135 of 2005

ANIL KUMAR GARG

Versus

SUPDT.ENGINEER, M.P.S.E.B.

Appearance:

Shri Mahesh Goyal, Advocate for the appellant.

Shri Rohit Shrivastava, Advocate on behalf of Shri Narottam Sharma, Advocate for respondent..

ORDER

This second appeal, under Section 100 of CPC, has been filed by the appellant/plaintiff assailing the judgment and decree dated 28-10-2004 passed by II Additional District Judge, Shivpuri, whereby the appeal preferred by the plaintiff was dismissed and the judgment and decree of the trial Court dismissing the suit were affirmed.

2. The suit was instituted by the plaintiff seeking declaration and permanent injunction against the defendant/Electricity Department contending that the electricity bill of Rs. 24,219/- raised on the allegation of excess load and irregular use of electricity was illegal, arbitrary and without proper inspection; that the Meter was not got inspected by the Electricity Inspector; that the load was incorrectly assessed by treating 40 HP Motor as 50 HP Motor and the 20 HP Motor which related to the closed Oil Mill was

also added while ascertaining load; and that the respondent was not justified in threatening disconnection of electricity supply.

3. The trial Court dismissed the suit holding that the plaintiff failed to prove his pleadings by leading evidence. The First Appellate Court, on appreciation of the entire material on record, recorded concurrent findings that sufficient opportunities were granted to the plaintiff to adduce evidence, however the plaintiff remained absent on the dates fixed for evidence and failed to substantiate the allegations regarding illegal billing, illegal assessment and alleged wrongful disconnection.

4. Learned counsel for the appellant submitted that the Courts below erred in dismissing the suit without granting proper and effective opportunity to the plaintiff to lead evidence; that the electricity department had raised an arbitrary and excessive bill without conducting a proper inspection; that the meter was wrongly treated as tampered; and that the plaintiff was ready and willing to lead evidence but was prevented due to circumstances beyond control. It was contended that the dismissal of the suit on the ground of non-production of evidence has resulted in failure of justice and that the matter deserves to be remanded for fresh consideration.

5. Heard, learned counsel for the appellant.

6. A bare perusal of the record reveals that issues were framed by the trial Court on 8/8/2003 and the case was fixed for plaintiff's evidence on 25/9/2003. On 25/9/2003, plaintiff sought time to lead evidence and the case was fixed for 11/11/2003. On 11/11/2003, in absence of plaintiff's evidence, the case was again fixed for 16/12/2003 for recording plaintiff's evidence.

Thereafter, again the case was fixed for 18/6/2004 and on that day also plaintiff failed to lead evidence. Instead, he moved an application under Order 6 Rule 17, CPC. However, the trial Court rejected the said application finding it to be not bonafide and moved only for the purposes of protracting the trial. As plaintiff had failed to lead evidence and sufficient opportunities had already been granted to him, therefore, his right to lead evidence was closed. The appellate Court also found that the amendments sought by way of filing an application under Order 6 Rule 17, CPC, were in the knowledge of plaintiff even at the time of filing of suit and, therefore, the said application was nothing but a camouflage for delaying the trial.

7. On careful consideration of the submissions and on perusal of the judgments of both the Courts below, this Court finds that the First Appellate Court has elaborately dealt with the chronology of dates fixed for evidence and has recorded that repeated and sufficient opportunities were granted to the plaintiff to adduce evidence. The findings that the plaintiff remained absent on the dates fixed for evidence and failed to show any sufficient cause are findings of fact based on record. The findings recorded by both the Courts below regarding the failure of the plaintiff to prove the allegations of illegal billing, illegal assessment and alleged wrongful disconnection are concurrent findings of fact. The appellant has not been able to point out any perversity, misreading of evidence or violation of any mandatory provision of law.

8. It is well established principle of law that this Court in exercise of powers under S.100 of CPC, cannot interfere in findings of facts even if they

are erroneous, unless the same are shown to be perverse. No perversity could be pointed out by counsel for the appellant.

9. The Supreme Court in the case of ***Angadi Chandranna Vs. Shankar and Others*** decided on **22/04/2025** in **Civil Appeal No.5401/2025** {Arising out of **SLP (C) No.6799 of 2022**}, has held as under:-

> "12. Before delving into the facts of the case, this court in Jaichand (supra) expressed its anguish at the High Court for not understanding the scope of Section 100 CPC, which limits intervention only to cases where a substantial question of law exists, and clarified that the High Court can go into the findings of facts under Section 103 CPC only under certain circumstances, as stated in the following passages:
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> > *"23. We are thoroughly disappointed with the manner in which the High Court framed the so-called substantial question of law. By any stretch of imagination, it cannot be termed even a question of law far from being a substantial question of law. How many times the Apex Court should keep explaining the scope of a second appeal Under Section 100 of the Code of Civil Procedure and how a substantial question of law should be framed? We may once again explain the well-settled principles governing the scope of a second appeal Under Section 100 of the Code of Civil Procedure.*
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> > *24. In Navaneethammal v. Arjuna Chetty reported in MANU/SC/2077/1996 : 1998: INSC: 349 : AIR 1996 S.C. 3521, it was held by this Court that the High Court should not reappreciate the evidence to reach another possible view in order to set aside the findings of fact arrived at by the first appellate Court.*
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> > *25. In Kshitish Chandra Purkait v. Santosh Kumar Purkait reported in MANU/SC/0647/1997 : 1997:INSC:487 : (1997) 5 S.C.C. 438), this Court held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial question of law and not mere question of law.*
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> > *26. In Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor reported in MANU/SC/0058/1999 : 1999 (2) S.C.C. 471, this Court held: Keeping in view the amendment made in 1976, the High Court can exercise its jurisdiction Under Section 100, Code of Civil Procedure only on the basis of substantial questions of law which are to be framed at the time of admission of the Second Appeal and the Second Appeal has to be heard and decided only on the basis of such duly*

framed substantial questions of law. A judgment rendered by the High Court Under Section 100 Code of Civil Procedure without following the aforesaid procedure cannot be sustained.

27. This Court in Kondira Dagadu Kadam v. Savitribai Sopan Gujar reported in MANU/SC/0278/1999 : 1999:INSC:192 : AIR 1999 S.C. 2213 held: The High Court cannot substitute its opinion for the opinion of the first appellate Court unless 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 without evidence.

28. It is thus clear that Under Section 100, Code of Civil Procedure, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

29. The High Court in the Second Appeal can interfere with the findings of the trial Court on the ground of failure on the part of the trial as well as the first appellate Court, as the case may be, when such findings are either recorded without proper construction of the documents or failure to follow the decisions of this Court and acted on assumption not supported by evidence. Under Section 103, Code of Civil Procedure, the High Court has got power to determine the issue of fact. The Section lays down: Power of High Court to determine issue of fact: In any Second Appeal, the High Court may, if the evidence on the record is sufficient to determine any issue necessary for the disposal of the appeal,- (a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or (b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100.

30. In Bhagwan Sharma v. Bani Ghosh reported in MANU/SC/0094/1993 : AIR 1993 S.C. 398, this Court held: The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature. But, after setting aside the findings of fact on that

ground the Court had either to remand the matter to the first appellate Court for a rehearing of the first appeal and decision in accordance with law after taking into consideration the entire relevant evidence on the records, or in the alternative to decide the case finally in accordance with the provisions of Section 103(b). ..... If in an appropriate case the High Court decides to follow the second course, it must hear the parties fully with reference to the entire evidence on the records relevant to the issue in question and this is possible if only a proper paper book is prepared for hearing of facts and notice is given to the parties. The grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be prejudged.

31. In the case of Hero Vinoth v. Seshammal reported in MANU/SC/2774/2006 : 2006:INSC:305 : (2006) 5 SCC 545 this Court explained the concept in the following words: It must be tested whether the question is of general public importance or whether it directly and substantially affects the rights of the parties. Or whether it is not finally decided, or 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.

32. It is not that the High Courts are not well-versed with the principles governing Section 100 of the Code of Civil Procedure. It is only the casual and callous approach on the part of the courts to apply the correct principles of law to the facts of the case that leads to passing of vulnerable orders like the one on hand."

12.1. In the present case, in our view, the so-called substantial question of law framed by the High Court does not qualify to be a substantial question of law, rather the exercise of the High Court is a venture into the findings of the First Appellant Court by re-appreciation of evidence. It is settled law that the High Court can go into the findings of facts only if the First Appellate Court has failed to look into the law or evidence or considered inadmissible evidence or without evidence. Section 103 permits the High Court to go into the facts only when the courts below have not determined or rendered any finding on a crucial fact, despite evidence already available on record or after deciding the substantial question of law, the facts of a particular case demand

re-determination. For the second limb of Section 103 to apply, there must first be a decision on the substantial question of law, to which the facts must be applied, to determine the issue in dispute. When the First Appellate Court in exercise of its jurisdiction has considered the entire evidence and rendered a finding, the High Court cannot re-appreciate the evidence just because another view is possible, when the view taken by the First Appellate Court is plausible and does not suffer from vice in law. When the determination of the High Court is only by way of re-appreciation of the existing evidence, without there being any legal question to be answered, it would be axiomatic that not even a question of law is involved, much less a substantial one. It will be useful to refer to another judgment of this Court in Chandrabhan (Deceased) through L.Rs & Ors. v. Saraswati & Ors.11, wherein it was held as follows:

"33. The principles relating to Section 100 of the Code of Civil Procedure 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. 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 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.

(iii) The general Rule is that the High Court will not interfere with findings of facts arrived at by 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. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.*
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> *34. In this case, it cannot be said that the First Appellate Court acted on no evidence. The Respondents in their Second Appeal before the High Court did not advert to any material evidence that had been ignored by the First Appellate Court. The Respondents also could not show that any wrong inference had been drawn by the First Appellate Court from proved facts by applying the law erroneously.*
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> *35. In this case, as observed above, evidence had been adduced on behalf of the Original Plaintiff as well as the Defendants. The First Appellate Court analysed the evidence carefully and in effect found that the Trial Court had erred in its analysis of evidence and given undue importance to discrepancies and inconsistencies, which were not really material, overlooking the time gap of 34 years that had elapsed since the date of the adoption. There was no such infirmity in the reasoning of the First Appellate Court which called for interference.*
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> *36. Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the First Appellate Court."*

12.2. In the present case, the First Appellate Court analyzed the entire oral evidence adduced by both parties, as well as the documentary evidence relied upon by either side, and dismissed the suit. The authority to re-consider the evidence is available only to the First Appellate Court under Section 96 and not to the High Court in exercise of its authority under Section 100, unless the case falls under the exceptional circumstances provided under Section 103. While so, the re-appreciation of the entire evidence, including the contents of the exhibits, reliance on and wrongful identification of a different property and treating the same to be the suit property actually in dispute to prescribe another view without any substantial question of law, only illustrate the callousness of the High Court in applying the settled principles. Therefore, the High Court erred in setting aside the judgment and decree of the First Appellate Court."

10. Considering the totality of the facts and findings arrived at by

both the Courts below and applying above principle of law laid down by Hon'ble Apex Court, this Court finds that no substantial question of law arises in the present appeal. Accordingly, the appeal fails and is, hereby, dismissed.

(DEEPAK KHOT)
JUDGE

(and)