



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 187 of 2023

Decided on: 19.07.2024

Himachal Pradesh State Electricity Board LimitedAppellant

Versus

Raj Kumar and another ...Respondents

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹

For the appellant : Ms. Sunita Sharma, Senior Advocate
with M/s Dhananjay Sharma and
Twarsu Negi, Advocates.

For the respondents : Mr. Vikas Rathore, Advocate for
respondents No. 1 and 2.

Ajay Mohan Goel, Judge (Oral)

By way of this regular second appeal, the appellant assails the judgments and decrees passed by learned Courts below, in terms whereof the suit for recovery filed by the appellant/plaintiff was dismissed by the learned Trial court, whereas the Counter Claim of the defendants for recovery of Rs.70,857/- was decreed and a composite appeal filed by the appellant against the dismissal of its civil suit and the decree granted in favour of the defendants in the Counter Claim was rejected by the learned Appellate Court.

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

2. Brief facts necessary for the adjudication of the present appeal are that the appellant/plaintiff (hereinafter to be referred as 'the plaintiff' for convenience) filed a suit for recovery of Rs. 1,37,354/- with interest *inter alia* on the ground that the defendant was an industrial unit and though, electricity was supplied to it by the plaintiff but the defendant had not paid the bills w.e.f. March, 2011 onwards despite repeated requests.

3. The defendants contested the claim of the plaintiff and also filed a Counter Claim for recovery of Rs.70,857/- *inter alia* on the ground that excess amount, which as per the defendants was refundable to them, was lying with the plaintiff.

4. In terms of the judgment and decree passed by learned Trial Court dated 28.08.2017, the suit of the plaintiff was dismissed whereas the counter claim of the defendants was partly allowed.

5. Rather than assailing the rejection of the civil suit and the decree that was passed in the counter claim in favour of the defendants, by filing two appeals, the appellant herein filed a composite appeal before the learned Appellate Court, which was dismissed vide judgment and decree dated 25.03.2022, which has led to the filing of the present regular second appeal.

6. This Court is of the considered view that single appeal filed by the appellant herein not maintainable and neither the

single appeal that was filed by the appellant before the learned first Appellate Court under Section 96 of the Code of Civil Procedure was maintainable. It is settled law that in case a Trial Court either decrees a suit and dismisses the counter claim or dismisses the suit and decrees the counter claim, then both amount to passing of two distinct decrees and if they are assailed by way of a single appeal, then non filing of appeal in one acts as res-judicata to the findings returned in the other. In fact, as there was a conflict of opinion in Hon'ble Single Benches of this Court on the issue, reference was made to Hon'ble Division Bench and the Hon'ble Division Bench of this Court has answered the reference in RSA No. 57 of 2017, titled as Shri Ramesh Chand vs. Om Raj and others and other connected matters, dated 17.05,2022. Conclusive para whereof reads as under:-

42. The principles deducible from the afore-discussed law can be summarized as follows:-

(i) When two suits are consolidated and tried together with common issues framed and common evidence led by the parties, resulting in a common judgment and decree, the same can be subjected to challenge by way of a single appeal at the instance of the aggrieved party;

(ii) Where a single appeal is filed questioning the judgment and decree passed in two suits, which were consolidated and decided by a common judgment, decision of such

single appeal, by a common judgment, reversing or modifying the claim in one suit out of the two, can be challenged by the aggrieved party also, in a single appeal.

(iii) When two suits though not consolidated but are decided by a common judgment, resulting into preparation of two separate decrees, the aggrieved party would be required to challenge both of them by filing separate appeals;

(iv) When both the suit and the counter claim are decreed by a common judgment, regardless of whether separate decree has been prepared in the counter claim, both would be required to be challenged by separate appeals;

(v) In a case where two separate appeals are required to be filed against judgment of the suit and the counter claim and if appeal is filed only against one and not against the other, non filing of appeal against such judgment and decree would attach finality thereto and would attract not only the principle of resjudicata but also waiver and estoppel and the judgment and decree not appealed against would be taken to have been acquiesced to by the party not filing appeal;

(vi) When however, two appeals are filed against a common judgment passed by the trial Court, both by the plaintiff and the defendant, and are disposed of by the first appellate Court by modifying/reversing/affirming

judgment of the trial Court, the aggrieved party, would be required to challenge both by two separate appeals, in absence of which, non-filing of appeal against one shall attract bar of the principles of res-judicata against another.

(vii) Where more than one appeals are required to be filed or are filed and one or more of them are dismissed for default, delay or any other similar reason, any such situation would attract res judicata and such dismissal would satisfy the requirement of appeal being heard and finally decided on merits "in a former suit" for the purpose of attracting principles of res judicata."

7. Therefore, in light of the adjudication by Hon'ble Division Bench of this Court, which adjudication is on the basis of the judgments of Hon'ble Supreme Court of India, as single appeal filed by the present appellant before the learned first Appellate Court and before this Court, were and are not maintainable, the present appeal is dismissed. Pending miscellaneous application(s), if any, also stands disposed of accordingly. Interim stands vacated.

(Ajay Mohan Goel)
Judge

July 19, 2024
(narender)