

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

FAO No. 170 of 2000.

Judgement reserved on:

Date of decision : June 29,2006.

Naresh Kumar Vij Appellant.
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Vs.

State of H.P. & anr. Respondents.
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Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. Ashok Sood, Advocate.

For the respondents: Mr. Ashok Chaudhary, Additional
Advocate General.

Surjit Singh, J. (Oral).

Heard and gone through the record. The present appeal is directed against the order, dated 8.10.1999 of the District Judge, whereby the judgement and the decree of the trial court, decreeing the suit of the appellant- plaintiff, for recovery of certain amount of money, on account of the value of the work executed by him for the respondents- defendants, has been set-aside and the wholesale remand has been ordered, after framing an additional issue.

Facts relevant for the disposal of the appeal may be noticed. Appellant- plaintiff filed a suit for recovery of a sum of Rs. 1,48,052/-,

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

alleging that he had executed certain works for the respondents-defendants on their asking and that only a part payment on account of the value of those works had been made and that a sum of Rs. 1,48,052/- was still due. The respondents- defendants, inter alia, pleaded that they had paid the entire amount of money due to the plaintiff and nothing was due on account of balance. The trial court framed various issues, one of which read as follows:-

“Whether the plaintiff is entitled to get the suit amount, with interest as alleged? OPP”

Parties went to trial. Evidence was led by both the parties. Respondents- defendants also led evidence in support of their plea that they had paid the entire amount of money due to the plaintiff on account of the works executed by him. The trial court on appraisal of the evidence concluded that a part of the suit amount was due to the plaintiff, on account of the balance of the value of the works executed by him.

Respondents- defendants went in appeal to the court of District Judge. The said court observed that no specific issue had been framed, with respect to the plea of the respondents- defendants that they had paid the entire amount due to the appellant- plaintiff and with this observation the trial court framed an additional issue, which reads as follows:-

“Whether the defendants had made final payment of work in dispute as alleged in para-2 of the written statement, if so its effect? OPD.

Having heard the learned counsel for the parties, I am of the considered view that the additional issue framed by the first

appellate court was in fact covered by the above reproduced issue framed by the trial court, because the plea of the defendants-respondents that they had paid the entire amount of money and nothing was due to the plaintiff, was in the nature of denial of the claim of the plaintiff and this plea was, therefore, covered by the aforesaid reproduced issue framed by the trial court, the onus of proof of which was placed upon the appellant- plaintiff. The respondents- defendants, by leading evidence in rebuttal of the aforesaid issue framed by the trial court, could have proved their aforesaid plea that they had discharged their entire liability and in fact they led the evidence on the lines of this plea.

In any case, when the parties had gone to trial knowing and understanding their respective cases full well and also led the evidence in support of their respective pleas, the first appellate court was not justified in ordering the wholesale remand. Evidence having already been led by the defendants in support of their plea and it having been taken into consideration by the trial court while deciding the matter, the first appellate court, in case it so felt, could have after framing the issue covering the defendants' plea, given the finding on the basis of the evidence, which the parties had already led, qua that plea.

In view of the above stated position, the appeal is allowed. The impugned order of the first appellate court is set-aside and the case is remanded to the first appellate court with a direction to re-admit the appeal at its original number and to decide the same on merits, of course, after hearing the parties. Parties are directed to appear before the first appellate court on 26th July, 2006. Records of the first appellate court as also the trial court be remitted to the first

appellate court immediately so that it reaches the said court before the aforesaid date. A copy of this judgement be also sent alongwith the record.

June 29, 2006.
(Hem)

(Surjit Singh),
Judge.