

(2011) 04 GUJ CK 0115
In the Gujarat High Court
Case No : Second Appeal No. 96 of 2000

Chandulal Mohanlal Joshi	Vs	APPELLANT
Gujarat Electricity Board		RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 04 GUJ CK 0115

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; Hemang Raval, for A.D. Oza, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present second appeal has been filed by the Appellant-original Defendant posing the following substantial questions of law:

Whether the claim advanced by the Respondent against the Appellants can be termed as "avyavharik debt" and whether the Appellants are under pious obligation to satisfy the claim? Whether the question of territorial jurisdiction of the Court can be raised in Appeal?

2. The facts of the case briefly summarized are that the Respondent-original Plaintiff - Gujarat Electricity Board, filed Civil Suit No. 122/89 before the Court of Civil Judge (J.D.), Manavadar for recovery of the dues of the bill to the tune of Rs. 15,560.73. On appreciation of evidence and after hearing the learned advocates for the parties, the suit was decreed by the judgment and order dated 18.8.93. Thereafter the said judgment and decree was challenged by way of Appeal No. 87/94 before the District Court, Junagadh. On appreciation of evidence and after hearing the learned advocates for the parties, the 3rd Extra Assistant Judge, Junagadh, dismissed the appeal specifically observing that it is a money decree. Therefore, the present second appeal has been filed posing the

substantial questions of law as stated above.

3. Heard the learned advocates for the parties.

4. As it transpires from the judgment of both the courts below, there is hardly any question of law, much less any substantial question of law, which can be said to have been involved. Though a reference is made to "avyavaharik debt" as referred to in the questions of law proposed, however, there is a finding and, in fact, it is a payment of outstanding dues by the consumer and such a contention would not have been entertained.

5. Another contention which has been raised is with regard to the jurisdiction which has also been considered by the courts below that such a contention about the jurisdiction could have been raised at the earlier point of time and therefore the findings arrived at cannot be said to be erroneous. In any case, in view of the concurrent finding of facts, the court is not inclined to entertain the present second appeal.

6. It is well settled that the scope of exercise of discretion u/s 100 of Code of CPC in second appeal is very limited. The Hon"ble Apex Court in catena of judicial pronouncements has held that unless substantial question of law is involved, the court should not interfere. The Hon"ble Apex Court in a judgment reported in Gurdev Kaur and Others Vs. Kaki and Others, in the case of Gurudev Kaur and Ors. v. Kaki and Ors. has observed that the second appeal should not become "third trial on facts" or "one more dice in the gamble." Further, the Hon"ble Apex Court has laid down guidelines with regard to scope of discretion.

In the circumstances, the present second appeal deserves to be dismissed and accordingly stands disposed. No order as to costs. Interim relief, if any, shall stand vacated.