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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 160 of 2008
Reserved on: 18.03.2026
Date of Decision: 11.05.2026

Chet Ram (since deceased)
through his LRs. & another ...Appellant

Versus

State of H.P. ..Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the appellants	:	Mr Janesh Gupta, Advocate.
For the respondent	:	Mr Lokender Kutlehira, Additional Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 26.11.2007, passed by the learned Additional District Judge, Shimla, H.P. (Learned Appellate Court) vide which the judgment and decree dated 06.08.2004, passed by the learned Civil Judge (Junior Division), Theog, District Shimla,

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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H.P. (learned Trial Court) were set aside. (The *parties shall be referred to in the same manner as they were arrayed before the learned Trial court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court seeking recovery of ₹1,98,000/ along with costs and interest. It was asserted that the plaintiffs had a Gharat (Water Mill) over the land bearing Khasra No. 138, situated in Chak Gudi, Pargana Parwati, Tehsil Theog, District Shimla, H.P. The plaintiff used to earn ₹2,500/- to ₹3,000/- per month by operating the Water Mill. The defendant constructed a bypass from Theog to Kotkhai and threw the debris over the Water Mill and the channel leading to the Water Mill. The Public Works Department official prepared a damage case, but no compensation was paid to the plaintiff; hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement, taking preliminary objections regarding lack of maintainability, locus standi and cause of action, the plaintiffs being estopped from filing the present suit due to their act and conduct, and the suit having not been properly valued for the court fees and

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jurisdiction. It was admitted on merits that the plaintiffs are owners in possession of the Water Channel and Water Mill located in Khasra No. 17/1 and 138. It was asserted that the defendants had taken all precautions while constructing the bypass road, but some debris fell thrown towards the valley side, which caused damage to the Water Channel and Water Mill. Revenue Department verified the claim of the plaintiff amounting to ₹8,100/- as a loss of income from the Water Mill and the estimated cost of repair of ₹5,142/-. The plaintiffs are entitled to get a total compensation of ₹13,242/-, which would be paid in due course after completing the formalities. The plaintiffs were duty-bound to repair the Water Mill, but they failed to do so. Therefore, it was prayed that the suit be dismissed.

4. No replication was filed.

5. The Ld. Trial Court framed the following issues on 11.07.2002:

1. Whether the plaintiffs are entitled to recover ₹1,98,000/- from the defendant as alleged? OPP
2. Whether the plaintiffs are estopped by their act and conduct to file the present suit? OPD

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3. Whether the suit has not been properly valued for the purpose of the court fee and jurisdiction, if so, what is the correct valuation? OPD.

4. Whether the defendants are liable to receive exemplary costs under Section 35-A of the CPC? OPD.

5. Relief.

6. The parties were called upon to produce the evidence, and plaintiff No. 2, Chet Ram, examined himself (PW-1), Laiq Ram (PW-2) and Chet Ram (PW-3). The defendant examined Bal Mukand (DW-1), Devi Chand (DW-2) and Mast Ram (DW-3).

7. The learned Trial Court held that the defendants did not dispute the damage to the Water Channel and the Water Mill. They claimed that the plaintiffs were entitled to loss of income of ₹8,100/- and cost of repair of ₹5,142/-, whereas the plaintiff claimed that they had sustained damages to the extent of ₹1,98,000/-. The loss of income was assessed only for three months. There is no evidence that the Water Mill used to function only for three months or that the Water Mill was made functional after sustaining damage; therefore, the defendant's version could not be believed. Even if the damages are assessed

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at the rate of ₹2700/- per month, they would be more than ₹ 2 lakh excluding the cost of repair to Water Mill and Water Channel; therefore, the learned Trial Court decreed the suit for the recovery of ₹1,98,000/- with interest at the rate of 6% per annum.

8. The defendants, being aggrieved by the judgment and decree passed by the learned Trial Court, filed an appeal which was decided by the learned Additional District Judge, Shimla, H.P. (learned Appellate Court). Learned Appellate Court held that the damage was caused to the Water Mill and the Water Channel in the year 1993. The cause of action was complete on the date of causing the damage. The suit could have been brought within three years from the date of the damage. The plaintiffs could have repaired the Water Mill themselves and claimed charges from the defendants. The cause of action could not be said to be continuing, and the suit was barred by limitation. Hence, the judgment and decree passed by the learned Trial Court were set aside.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff has filed the present

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appeal, which was admitted on the following substantial questions of law on 02.04.2009: -

1. When the defendant failed to contest the suit by raising a question of limitation, which was not put to issue before the Trial Court, has the Lower Appellate Court acted in an erroneous and perverse manner in dismissing the suit by holding the same to be time-barred?
2. Whether the findings returned by the Lower Appellate Court are erroneous and perverse and are the result of misreading of pleadings, evidence and misconstruing the provisions of the Limitation Act?
3. Whether the Lower Appellate Court has acted in excess of its jurisdiction in permitting the defendant/respondent to raise the issue of limitation when the same was not raised before the Trial Court and ought to have been held to be waived?

10. I have heard Mr Janesh Gupta, learned counsel for the appellants/plaintiffs, and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

11. Mr Janesh Gupta, learned counsel for the appellants/plaintiffs, submitted that the learned Appellate Court erred in accepting the appeal on the question of limitation. The defendants had not taken the plea of the limitation in their written statement. They admitted that the plaintiff had suffered damages and claimed that the payment was being made to the plaintiff. This shows that the defendants acknowledged the

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claim of the plaintiffs. He prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside. He relied upon the judgments of the Hon'ble Supreme Court passed in ***Madras Port Trust vs. Hymanshu International 1979 (4) SCC 176*** and ***Ramji Singh Patel vs. Gyan Chandra Jaiswal 2018 INSC 23*** in support of his submission.

12. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State, submitted that the learned Appellate Court had rightly held that the suit was barred by limitation. The Water Mill was damaged in the year 1993, as per the plaintiffs. The plaintiffs filed a suit in the year 2000, which was beyond the period of three years. Learned Appellate Court was justified in holding that the suit was barred by limitation. Section 3 of the Limitation Act casts an obligation upon the Court to dismiss the suit even though limitation has not been pleaded as a defence. There is no infirmity in the judgment and decree passed by the learned Appellate Court. Hence, he prayed that the appeal be dismissed.

13. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

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Substantial questions of law No. 1 and 3.

14. Both these substantial questions of law relate to the question of limitation; therefore, they are being taken up together for disposal.

15. The defendant did not plead in the written statement that the suit was barred by limitation; rather, they acknowledged the plaintiffs' claim by saying that the plaintiffs had suffered a loss of ₹8,100/-as loss of income and ₹5,142/- as the cost of repair, and the money would be paid to the plaintiffs after the completion of the formalities.

16. It was laid down by Hon'ble Supreme Court in ***Ramji Singh Patel v. Gyan Chandra Jaiswal, (2018) 14 SCC 120 : (2018) 4 SCC (Civ) 481: 2018 SCC OnLine SC 189*** that when no plea of limitation was taken by the defendant, and no issue of limitation was framed by the Court, the plea of limitation should not be allowed to be taken unless it is a pure question of law. It was observed at page 193: -

> **11. [Ed.: Para 11 corrected vide Official Corrigendum No. F.3/Ed.B.J./22/2017 dated 21-5-2018.]** After hearing the learned counsel for the parties, we do not find ourselves in agreement with the approach of the High Court. It may be noted that in the first instance, no such plea was taken up by the respondent in the written submissions filed by him to the suit, which was filed by the appellant-plaintiff,

> and no issue on limitation came to be cast. Obviously, in the absence of any such issue framed, the parties did not lead any evidence. No doubt, even in the absence of any specific issue of limitation, by virtue of Section 3 of the Limitation Act, power is cast on the Court to see whether the suit is within limitation or time-barred. However, such a plea could have been taken by the respondent in the second appeal before the High Court only if the issue of limitation was raised as a pure question of law. In the instant case, we find it to be a mixed question of law and fact, and, therefore, it could not have been entertained by the High Court for the first time in the second appeal filed by the respondent.

17. The defendant in the present suit was the State of H.P. It was laid down by the Hon'ble Supreme Court in ***Popatrao Vyankatrao Patil v. State of Maharashtra, (2020) 19 SCC 241: 2020 SCC OnLine SC 291*** that a public authority of the Government should not ordinarily take up technical pleas to defeat the legitimate claim of the citizen. It was observed at page 246:

> **14.** This Court has time and again held that the State should act as a model litigant. In this respect, we can gainfully refer to the following observations made by this Court in ***Urban Improvement Trust, Bikaner v. Mohan Lal [Urban Improvement Trust, Bikaner v. Mohan Lal, (2010) 1 SCC 512: (2010) 1 SCC (Civ) 163: (2010) 1 SCC (Cri) 818: (2010) 1 SCC (L&S) 178***]: (SCC pp. 515-16, paras 6-9)
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> > "*6.* This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this regard.

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7. In ***Dilbagh Rai Jarry v. Union of India [Dilbagh Rai Jarry v. Union of India, (1974) 3 SCC 554: 1974 SCC (L&S) 89***] this Court extracted with approval the following statement [from an earlier decision of the Kerala High Court (***P.P. Abubacker case [Ed. : P.P. Abubacker v. Union of India, 1971 SCC OnLine Ker 71: AIR 1972 Ker 103: ILR (1971) 2 Ker 490: 1971 KLJ 723]***, AIR pp. 107-08, para 5)] : (SCC p. 562, para 25)

> '25. ... "5. ... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, the Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957."'

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> *8.* In ***Madras Port Trust v. Hymanshu International [Madras Port Trust v. Hymanshu International, (1979) 4 SCC 176]*** this Court held: (SCC p. 177, para 2)
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> > '2. ... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.'
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> *9.* In a three-Judge Bench judgment of ***Bhag Singh v. State (UT of Chandigarh) [Bhag Singh v. State (UT of Chandigarh), (1985) 3 SCC 737],*** this Court held: (SCC p. 741, para 3)
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> > *3.* ... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.'"

18. Therefore, it was not permissible for the State to contend before the learned Appellate Court that the suit was barred by limitation and such a plea could not have been entertained by the learned Appellate Court when no such plea was taken before the learned trial Court; hence, these substantial questions of law are answered accordingly.

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Substantial question of law No.2

19. Learned Appellate Court held that the assessment report (Ext.DW-1/A) was produced by the defendant, and they cannot be heard to say that the monthly loss of earnings was less than ₹2700/-per month. Total loss of earnings and cost of repair would be more than ₹2,00,000/- at this rate. However, the suit was not within the limitation, and the plaintiffs cannot be held entitled to any damages. It has been found above that the plea of limitation was not taken by the defendants, and it was impermissible for the learned Appellate Court to go into this question; hence, the learned Appellate Court erred in rejecting the claim on the ground of limitation, and the substantial question of law is answered accordingly.

Final Order

20. In view of the above, the present appeal is allowed, judgment and decree passed by the learned appellate court are ordered to be set aside, whereas the judgment and decree passed by the learned Trial Court are ordered to be restored.

21. The present appeal stands disposed of in the aforesaid terms, so also the pending application(s), if any.

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22. The record of the learned Courts below be returned forthwith along with a copy of this judgment.

(Rakesh Kainthla)
Judge

11th May, 2026
(ravinder)