

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.6170 of 2014 (O&M)

Date of decision:15.10.2015

Kamlesh Kumari

... Appellant

versus

Swaran Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjiv Gupta, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (*Oral*)

1. The defendant is the appellant before this court. The plaintiff was the husband. The claim was made by the husband after the divorce. The suit was for recovery of amounts paid by the plaintiff through cheques on various dates. The trial Court granted a decree partially admitting with reference to cheques which had been admitted and for which, payments had been actually made to the defendant but declined the relief to the plaintiff with reference to the large claim through a cheque for ₹ 1,40,000/- since it found that the said payment was for discharge of a mortgage debt on the property which was in the name of the defendant. Both parties were

aggrieved and in appeal, the appellate court modified the trial court decree and allowed for an additional sum brought through a cheque and the payments in respect thereof to the defendant had also been proved.

2. The defence was not denial of the amounts covered under the cheques but a plea of discharge that the plaintiff had fallen ill and the amounts had been spent by the divorced wife for the husband and there had been a discharge of such liability. When the receipt of the amounts were admitted and the defendant was pleading only for a case of discharge of burden of proof, such burden of proof was wholly on the defendant and if that was not established, the consequence must be only to grant a decree for the amounts which were admittedly received by the defendant.

3. The learned counsel says that the matter could be settled between parties and notice could be issued. Settlement could still be attempted by the wife in any other manner which is known to her and that ought not to be pressed only for the purpose of issuing notice. I find nothing substantial for consideration in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

15.10.2015
sanjeev