

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**RSA No. 2090 of 2016(O&M)  
Date of decision : May 3, 2016**

**Sanjay Verma**

**..... Appellant**

**Versus**

**Gurdeep Kaur and others**

**..... Respondent**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Sachin Jain, Advocate  
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

**Amit Rawal, J (oral).**  
**CM No. 5544-C of 2016**

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 51 days in filing the appeal is condoned.

The application stands disposed of.

**RSA No. 2090 of 2016**

The appellant-plaintiff is aggrieved of the impugned judgment and decree rendered by the lower appellate court whereby he is held entitled to

refund

of earnest money of ₹3,38,000/- along with pendente lite and future interest @ rate of 6% per annum.

Learned counsel for the appellant submits that in the criminal proceedings reached upto this Court the respondent-defendant admitted the payment of ₹1,50,000/- alleged to have been paid by cheque, therefore, the said statement has been proved on record vide Ex.D-6, thus, the plaintiff discharged the onus in proving the payment.

Assuming for an argument sake, though not admitting that the lower appellate court found that the appellant-plaintiff was not ready and willing to pay ₹1,50,000/-, he is pressing relief of specific performance and the suit had been filed within specified period from the expiry of stipulated date and this fact has not gone un-noticed, therefore, the findings are not only fallacious but repugnant, thus urges this Court for setting aside the impugned order.

I have heard learned counsel for the appellant, appraised the paper book and of the view that it is not in dispute that the defendant had also challenged the finding rendered by the lower appellate court qua ordering refund of earnest money in RSA No. 1366 of 2016 and the same was dismissed vide order dated 31.3.2016 whereby the finding rendered by the lower appellate court qua refund of earnest money has been upheld. It was incumbent upon the appellant-plaintiff to discharge onus by leading secondary evidence viz-a-viz copy of the cheque and also statement of the

official of the bank where respondent-defendant had maintained account regarding encashment of the cheque. Such evidence would have helped the court in calculating the refund of amount. In the absence of discharging the onus, I am of the view that mere admission in the criminal proceedings on behalf of the defendant would not tantamount to proving the payment of encashment of the amount as referred to in the cheque.

In view of the aforementioned facts and circumstances, I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**May 3, 2016**  
**archana**