

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

-.-

RSA 1963 of 2015 (O&M)
Date of decision: 25.01.2016

Ajay Mishra and another

.....Appellants

Versus

Dr. Nishi Gupta

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. L S Sidhu, Advocate
for the appellants

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

Rekha Mittal, J.

CM 5204-C of 2015

Prayer in this application is for condoning delay of 545 days in refiling the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Dalbir Singh, the application is allowed, delay of 545 days in refiling the appeal stands condoned.

CMs 5201-2-C of 2015

Allowed as prayed for.

Main case

The present regular second appeal has been directed against

concurrent findings recorded by the Courts below whereby the suit filed by the respondent for recovery of Rs.68,000.00 has been decreed by the learned trial Court and the judgment and decree passed by the trial Court has been affirmed with modification to the extent that the respondent has been held entitled to an amount of Rs.50,000.00 along with interest @ Rs.9% per annum from the date of issuance of cheque i.e. 07.06.2001 till the date of decree along with future interest @ 6% per annum from the date of decree till actual realization.

Counsel for the appellants contends that the cheque in question for a sum of Rs.50,000.00 was issued by the respondent in order to discharge liability to pay charges for getting cars of the respondent and her family repaired from the workshop of the appellants, on credit basis. It is further argued that the appellants never obtained any loan and plea of the respondent in regard to lending of an amount of Rs.50,000.00 is belied from the fact that cheque bearing No.513983 dated 07.06.2001 was a 'bearer cheque' and not an 'account payee cheque'.

I have heard counsel for the appellants and perused the records.

Counsel for the appellants has fairly conceded that there is no document on record to substantiate version of the appellants that any car of the respondent or her family had been brought to the workshop of the appellants for repairs much less an amount of Rs.50,000.00 was outstanding towards repair charges. There is no denial that the cheque in question was issued by the respondent for a sum of Rs.50,000.00 which was got encashed by the appellants. The mere fact that the cheque in question was a 'bearer cheque' and not an 'account payee cheque' is neither sufficient to negate plea

of the respondent in regard to advancing of loan nor substantiates plea of the appellants that the same pertains to the payment of outstanding repair charges.

In view of the above, neither any substantial question of law arises for adjudication nor there is any error much less illegality in the consistent findings recorded by the Courts below, holding in favour of the respondent. The error committed by the trial Court in granting interest on the amount of interest has been rightly rectified by the Court in appeal by way of modification in the judgment and decree passed by the learned trial Court.

For the foregoing reasons, findings no merit, the appeal is dismissed *in limine*. No order as to costs.

(Rekha Mittal)
Judge

25.01.2016
mohan bimbura