

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 129 of 2024 (O&M)

Date of Decision: 12.01.2024

State Bank of India and Another

... Appellant(s)

Versus

M/s Elkosta Security Systems India

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. A.S.Gagrha, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. In this regular second appeal, the challenge is to the correctness of the impugned order passed by the First Appellate court for refusing to condone the delay of 456 days in filing the appeal.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The respondent opened a current account bearing No. 51005450149 with the appellant-bank. The respondent filed a suit for the recovery of the amount of ₹7,00,000/- which was stated to be planned to issue a cheque in favour of the Housing

Development Finance Corporation Bank, however, it was cancelled. The bank encashed the aforesaid cheque by handing over a huge amount of ₹7,00,000/-. When the plaintiff demanded that it should have been shown the original cheque as well as the CCTV footage, the bank refused. The plaintiff was forced to file the suit. The said suit was decreed by the trial Court on 30.04.2012, after noticing that the bank has failed to produce the original cheque and even the CCTV footage was not produced in the Court.

4. As already noticed, the appeal was filed along with an application for condonation of delay of 456 days. The condonation of delay was sought on the ground that the file remained pending due to the routine transfer of the staff and negligence of the previous counsel. The First Appellate Court has held that the appellant has failed to furnish sufficient explanation for seeking condonation of the clossal delay of 456 days. The Court noticed that in the execution petition, the bank entered appearance in the month of March, 2023, whereas the appeal was filed only in the month of September, 2023. Hence, the Court concluded that the appellant-Bank has made a deliberate attempt to coin false excuse to seek condonation of delay.

5. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book.

6. The learned counsel representing the appellant contends that a photocopy of the cheque has been produced and the original cheque was sent to the Central Forensic Science Laboratory (hereinafter referred to as "CFSL") for expert examination. He further submits that a photocopy of the cheque has been produced which was a bearer cheque, therefore, it was

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permissible for the bank to encash the same. He relies upon Section 89 of the Negotiable Instruments Act, 1881.

7. This Court has considered the submissions of the learned counsel representing the appellant.

8. The bank has neither produced the original cheque nor examined any official from the CFSL with regard to the availability of the cheque. The CFSL has already opined that the contents of the cheque have been manipulated and there are signs of tracing.

9. On a court question as to why the CCTV footage was not produced, the learned counsel claims that the same cannot be supplied to the plaintiff, however, there was no hitch in producing the same in the Court.

10. The learned counsel representing the appellant did not press any other issue.

11. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present appeal is dismissed.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 12, 2024
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No