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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ RFA 405/2024 & CM APPL. 31167/2025

AVADH BIHARI KAUSHIK .....Appellant

Through: Mr. Avadh Bihari Kaushik, appellant in-person.

versus

VIKRAM SINGH YADAV .....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **28.10.2025**

CM APPL. 36601/2024 (condonation of 78 days' delay in *filing* the appeal)

By way of the present application filed under Order XLI Rule 3-A(1) read with section 151 of the Code of Civil Procedure 1908 ('CPC'), the appellant seeks condonation of about 78 days' delay in *filing* the appeal.

Notice on this application was issued on 04.07.2024.

2. No reply has been filed to the application so far.

3. For the reasons stated in the application, which is duly supported by affidavit, the delay is condoned.

4. The application is allowed.

5. Appeal is taken on Board.

6. The application stands disposed-of.

RFA 405/2024

7. By way of the present appeal filed under section 96 read with Order XLI Rule 1 of the CPC, the appellant impugns judgment and decree dated 14.12.2023 passed by the learned Additional District Judge-04,

North-West District, Rohini Courts, Delhi, in suit bearing CS DJ No. 714/2023, *limited to the extent* that while decreeing the suit filed under Order XXXVII of the CPC for money claimed based on two cheques, the learned trial court has omitted to grant future interest.

8. Notice on this appeal was issued on 04.07.2024.

9. No one is present on behalf of the respondent when the matter is called-out.

10. Mr. Avadh Bihari Kaushik, the appellant appearing in-person submits, that the suit filed under the summary procedure under Order XXXVII of the CPC was based on the two cheques, *viz.*, cheque No. 418008 dated 01.03.2023 for Rs. 3 lacs; and cheque No. 418001 dated 09.03.2023 for Rs. 4 lacs, which were issued by the respondent towards refund of a friendly loan/financial assistance of Rs.7 lacs, given by the appellant to the respondent in the following manner, as detailed in the plaint:

> "*8. That, in the manner aforesaid, the plaintiff paid a total sum of Rs. 7,00,000/- to the defendant as refundable loan summary thereof is as under :-*

Sl. No.	*Date*	*Amount (Rs.)*	*Mode of payment*	*Bank Account details of Plaintiff*
1.	*07.09.2020*	*2,00,000/-*	*RTGS (Cheque No. 00099)*	*Personal Saving A/c No. 21740100002381 maintained with Bank of Baroda, M2K Chowk, Sector-8, Rohini, Delhi*
2.	*08.09.2020*	*3,00,000/-*	*RTGS (Cheque No. 000100)*	*Ditto*

3.	*01.03.2021*	*50,000/-*	*Transferred online*	*Current A/c No. 40100200000207 of Avadh Kaushik & Co. maintained with maintained with Bank of Baroda, M2K Chowk, Sector-8, Rohini, Delhi*
4.	*01.03.2021*	*50,000/-*	*Transferred online*	*Ditto*
5.	*18.03.2022*	*50,000/-*	*IMPS*	*Joint Saving A/c No. 40100200000823 of plaintiff and his wife maintained with Bank of Baroda, M2K Chowk, Sector-8, Rohini, Delhi*
6.	*19.03.2022*	*50,000/-*	*IMPS*	*Ditto*
Total		*7,00,000/-*		

11. However, the aforesaid two cheques were returned unpaid by the respondent's bank with the remarks "*exceeds arrangements*".

12. Mr. Kaushik submits, that since despite service of summons for appearance, no one entered appearance on behalf of the respondent, the learned trial court was pleased to decree the suit by way of the impugned judgment.

13. It is submitted that in the concluding para of the impugned judgment, the learned trial court has observed as follows:

> "*In view of the provisions under Order 37 Rule 2(3) CPC, upon failure of the defendant to file the appearance within prescribed period, the allegations made by the plaintiff in the plaint are deemed to be admitted by the defendant and the plaintiff is*

> *entitled to the decree of the sum claimed in the suit accordingly as per provisions of the Order 37 CPC, the suit is decreed for an amount of Rs. 7,00,000/- in favour of plaintiff and against the defendant Vikram Singh Yadav alongwith cost of the suit and the interest at the rate of 18% p.a., as per Negotiable Instrument Act 1881, from the date of the suit till date of decree.*"

(emphasis supplied)

14. It is pointed-out however, that for some unknown reason, perhaps even by inadvertence, the learned trial court has not granted to the appellant the 'future interest' on the decretal amount.

15. Mr. Kaushik argues, that it is now settled law, that mere demand of interest on money claimed to be due, which is otherwise covered under the provisions of Order XXXVII of the CPC, would not take a suit beyond the scope of the summary procedure under Order XXXVII CPC.

16. Furthermore, it is argued, that even if there is no agreement between the parties as to any specified rate of interest, a plaintiff is entitled to grant of interest at the prevailing market rates, since the plaintiff is deprived of the use of money to which he is otherwise legitimately entitled and is required to be compensated for that loss, by way of interest.

17. Attention in this behalf is drawn to a recent decision of a Co-ordinate Bench of this court in ***ITC Limited vs. Samita Bhatia Proprietor S.S. Enterprises***,[1] in particular paras 23 and 24 of the said judgment, which read as follows:

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[1] 2024 SCC OnLine Del 3052

"23. The law on payment of interest has been settled in Oil and Natural Gas Corpn. Ltd. v. State Bank of India, 2001 SCC OnLine Bom 119; Daryanani (Indo Saigon) Construction (P) Ltd. v. Mantri Realty Ltd., 2017 SCC OnLine Bom 7963; Khera Handloom Supply v. O.B. Exports, 1990 SCC OnLine Del 42 and Diglife Distribution and Marketing Services Ltd. v. Stalco Consultancy and Systems (P) Ltd., 2018 SCC OnLine Del 11278, wherein it was held that <u>where an amount/liability is admitted by the defendants, then merely a claim for interest made in the Legal Notice making a demand from the defendants, which was not mutually agreed by the parties, would not make the Suit/claim beyond the scope of Order XXXVII CPC, 1908</u>.

*"24. The issue is no more res integra that <u>even if there is nothing on record to show that there existed any agreement between the parties to claim any specified interest, the plaintiff is entitled to claim interest as per the **prevailing market rates**, because a person is entitled to payment of interest on the principal amount as such person was deprived of the use of money to which he was legitimately entitled and has a right to be compensated for such deprivation and for such period of deprivation **till the amount is released in his favour**</u>."*

(emphasis supplied)

18. Insofar as the rate of interest is concerned, Mr. Kaushik submits that since by way of the impugned judgment, the learned trial court has granted to the appellant interest @ 18% per annum, there was no reason to have restricted that interest only to the period from the date of filing the suit till the date of decree; and the same rate of interest ought to have been awarded for the future period as well.

19. In the present proceedings, the respondent stands served, as was recorded in order dated 05.11.2024, when the Predecessor Bench has observed as follows:

"1. Affidavit of service along with supporting documents including report of process server of the local court has already

been filed on behalf of appellant. Despite service of notice, none appears for respondent."

20. However, no one has appeared for the respondent on any date of hearing thereafter.

21. The respondent is accordingly set *ex-parte*.

22. The court is also informed that the respondent has not challenged the impugned judgment and decree dated 14.12.2023.

23. On a conspectus of the submissions made, and the documents placed on record, and in particular on perusal of the impugned judgment dated 14.12.2023, this court sees no reason why the appellant was not granted future interest on the amount comprised in the two cheques that were subject matter of the proceedings before the learned trial court.

24. Furthermore, this court finds no reason why the interest should not be granted at the same rate *as has been stipulated* in the impugned judgment. Though, no enquiry appears to have been made by the learned trial court as to the prevailing market rate of interest at the relevant time, absent any challenge by the respondent to the rate of interest awarded in the decree, it appears justified that the rate of interest awarded by the learned trial court for the *pendente-lite* period should also be awarded for the future period.

25. Accordingly, the present appeal is allowed; thereby modifying the impugned judgment dated 14.12.2023, *limited to the extent* that apart from the interest already awarded by way of the said judgment, the appellant shall *also* be entitled to interest on the sum of Rs. 7 lacs @

18% per annum from the date of the decree dated 14.12.2023 till the date of realisation.

26. The present appeal is disposed-of in the above terms.

27. Pending applications, if any, also stand disposed-of.

28. Let a fresh decree-sheet be drawn-up in view of the above terms.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 28, 2025
V.Rawat