



\$~106

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

+ RSA 126/2025

M/S INDIAN INSTITUTE OF AIRCRAFT ENGINEERING

.....Appellant

Through: Mr. G. S. Gangwa with Mr. Jatin
Kumar, Advocates.

versus

CHETNA RAJESH NAYAN (SINCE DECEASED THROUGH HER
LRS)

....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

25.08.2025

CM APPL. 52756/2025

Exemption granted, subject to just exceptions.

The application stands disposed of.

RSA 126/2025 & CM APPL. 52755/2025 (for stay)

By way of the present regular second appeal filed under section 100 of the Code of Civil Procedure 1908, the appellant (defendant) impugns judgment dated 17.03.2025 passed by the learned District Judge-05, New Delhi District, Patiala House Courts, New Delhi in regular first appeal bearing RCA No. 31/2020, whereby the learned first appellate court has set-aside judgement dated 27.02.2020 passed by the learned Civil Judge, New Delhi District,



Patiala House Courts, New Delhi in suit bearing CS No. 56630/2016. *Vide* judgment dated 27.02.2020, the learned trial court had dismissed the suit bearing CS No. 56630/2016 filed by the respondent (plaintiff) *inter-alia* seeking recovery of Rs. 2,55,980/-.

2. The court has heard Mr. G. S. Gangwa, learned counsel for the appellant at length.
3. Upon being queried as to what questions of law are sought to be raised by way of the present second appeal, learned counsel has drawn attention to the proposed questions of law set-out in the memo of appeal, which read as follows:

“I. Whether the Hon’ble appellate Court is correct in passing the impugned judgment without appreciating that onus to prove her case is not upon the respondent/plaintiff rather the appellant/defendant is liable to disprove the case of the respondent/plaintiff?

II. Whether in the facts and circumstances of the case, the Hon’ble Appellate Court was justified in passing the impugned judgment while the respondent/plaintiff has been failed to provide any calculation for relief as prayed in the plaint?

III. Whether in the facts and circumstances of the case, the Hon’ble Appellate Court was justified in passing the impugned judgment while the respondent/plaintiff had been in receipt of settlement amount from the appellant/defendant?”

4. While evidently the proposed questions set-out at (II) and (III) above are questions of fact that have been decided by the learned first appellate court on the basis of the evidence that had come on record, this court has considered the proposed question of law set-out at (I) above, since it *seems* to raise a question that the onus of proof had been placed on the wrong party. Question (I) requires consideration since the



respondent (plaintiff) had raised a claim for arrears of salary and other emoluments; and the appellant (defendant) had claimed that all salary and other emoluments due to the respondent had been paid.

5. However, a perusal of the impugned judgment shows that insofar as the onus of proving whether or not the respondent, admittedly an employee of the appellant, had been paid her salary and other dues, has been considered and decided by the learned first appellate court in the following manner:

"18. Now, bone of contention between the parties is that the appellant has claimed that she had not been paid the salary from October 2011 to March 2013 i.e. for 18 months, while the respondents have taken a stand that the salary of the appellant has been paid upto date and nothing is due against the respondent no. 2. It is further contended by the respondents that Rs.72,400/- was paid to the appellant on 16.02.2013 towards her salary upto 20.02.2013 and the appellant has signed the payment voucher for the same and after receipt of Rs. 72,400/- by the appellant, her claim stood settled in all respects.

"19. Once it is established that the appellant had worked with the respondent no. 2 till March 2013 and the respondents also claimed that the entire salary stood paid to the appellant, the onus shifted upon the respondent no. 2 to prove the fact that salary from October 2011 to March 2013 stood paid to the appellant and nothing was payable and due against it.

* * * * *

"21. From the aforesaid cross-examination of PW-1 (the appellant), it is revealed that the appellant used to take salary from the respondent no. 2 against payment vouchers, however it is not discernible that the said vouchers used to remain in possession of the appellant. It also does not appear plausible that the vouchers against which the salary was disbursed to the appellant would remain in possession of the appellant. Rather it would remain with the employer i.e. the respondent no. 2.



“22. The respondents though have claimed that entire salary stood paid to the appellant and nothing is due and payable by the respondent no. 2, however not a single document in support of the said claim has been placed on record by the respondents.

“23. In this regard, DW-1 Ajay Kumar stated in his cross-examination that they have salary records in respect of the payment made to the plaintiff in respect to her salary from October 2011 onwards. However, no such record has been placed on record by the respondent no. 2. The respondents have taken only a vague plea that a final settlement has taken place on 16.02.2013 and the salary upto 20.02.2013 amounting to Rs. 72,400/- was paid to the appellant and with the said receipt of the payment by the appellant, all accounts stood settled between the parties.

“24. In this respect, DW-1 Sh. Ajay Kumar stated in his cross-examination that in February 2013, a final statement of salary of the plaintiff was prepared and the plaintiff signed the said statement. He further stated that the amount in the said final statement was Rs. 72,400/- which was duly signed by the plaintiff. However, the said final statement duly signed by the plaintiff has not been produced and proved by the respondent no. 2. DW-1 further stated that on the same day of signing the said final statement for Rs. 72,400/-, the plaintiff received Rs. 51,000/- by way of cash duly signed by her on payment voucher and on the same date, balance amount of Rs. 21,400/- was paid by way of post dated cheque bearing no. 958707 dated 26.02.2013. He further stated that the cheque bearing No. 958707 got bounced and the payment of Rs. 8000/- in cash was made against the said cheque on 12.03.2013 and on 18.03.2013 another payment of Rs. 8100/- in cash was made to the plaintiff against the said cheque which was duly signed by the plaintiff. DW-2 Ashok Kumar Yadav has also admitted in his cross-examination that cheque issued to the plaintiff towards payment of salary got bounced.

“25. Again, the respondents have not placed on record any such payment voucher showing receipt of cash of Rs. 51,000/- by the appellant.”

(emphasis supplied)



6. Furthermore, another defence taken by the appellant was that the respondent had been negligent towards discharge of her duties, for which the appellant claimed, she was issued warnings; and the appellant had suffered loss of Rs.3,00,000/- due to certain books that had gone missing as a result of the respondent's negligence. In the impugned judgment however, the learned first appellate court has addressed this contention in the following manner:

"27. With regard to the contentions of the respondents that the appellant was negligent in discharge of her duties for which she was given warnings by the respondent no. 2 or that the respondent no. 2 suffered loss of Rs. 3,00,000/- because of missing of books due to negligence of the appellant, DW-1 Sh. Ajay Kumar has admitted in his cross-examination that he has not filed any complaint against the plaintiff in respect of alleged loss of books. He further admitted that no such written warnings regarding her unauthorized leave have been placed on record. He further stated that he is not clear when and by which mode the plaintiff was asked about the missing books and by whom.

(emphasis supplied)

7. It is in view of the abovesaid observations that the learned first appellate court has set-aside judgment dated 27.02.2020 passed by the learned trial court, whereby the suit filed by the respondent was dismissed. The learned first appellate court has accordingly allowed the first appeal by way of the impugned judgment dated 17.03.2025 in the following terms:

"38. In view of the aforesaid discussions, the impugned judgment and decree dated 27.02.2020 are not sustainable and hence set aside. The appellant is entitled to suit amount i.e. salary for 18 months @ Rs.14,220/- per month from October 2011 to March 2013 amounting to Rs. 2,55,960/- from the respondent no. 2.



Since the respondent no. 1 was only the Director of the respondent no. 2 institute and the appellant was not in his employment, the respondent no. 1 cannot be held liable for payment of salary to the appellant on behalf of the respondent no. 2.

“39. As the respondent no. 2 has withheld the salary of the appellant, the appellant is held entitled to interest @ 9% per annum on the suit amount of Rs.2,55,960/- from 01.04.2013 till filing of the suit. The appellant is also held entitled to pendentite and future interest on the decretal amount @ 6 % per annum till the realization of the decretal amount from the respondent no. 2. Cost of the suit is also awarded to the appellant.”

8. Clearly therefore, the question of law sought to be raised at (I) above is also misconceived, inasmuch as the respondent's case before the trial court was that she had not received her salary and other emoluments, while the appellant's case was that the entire salary and other emoluments had been duly paid to the respondent. Since that was the contestation between the parties, there was nothing for the respondent to prove by way of evidence; and the onus to prove that salary and other emoluments had been paid to the respondent, was upon the appellant. The learned first appellate court had accordingly taken the correct view insofar as the onus of proof was concerned.
9. Accordingly, the question of law sought to be raised at (I), to the effect that the onus to prove the respondent's case was not upon the appellant, is wholly misconceived, since the appellant was only being required to prove what the appellant had asserted, namely that the appellant had paid the entire salary and other emoluments due to the respondent.



10. In view of the above, this court is unable to discern any question of law, muchless any substantial question of law, that arises in the present regular second appeal.
11. The regular second appeal is accordingly dismissed at the stage of issuance of notice itself.
12. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 25, 2025
ds