THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO No. 110 of 2005 along with
Connected matters being FAO
Nos. 111, 112, 113, 114, 115,116 & 117 of 2005.

Judgment reserved on: 8.5.2006

Date of Decision: May 26, 2006.

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1. FAO No. 110 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

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2. FAO No. 111 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

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3. FAO No. 112 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

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4. FAO No. 113 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

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5. FAO No. 114 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

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6. FAO No. 115 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

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7. FAO No. 116 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

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8. FAO No. 117 of 2005.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. Bhupender Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate in all the FAOs.**

For the Respondent(s): **Mr. Harsh Khanna, Advocate, in all the FAOs.**

Deepak Gupta, J.

This judgment shall dispose of eight appeals as common questions of law and facts are involved in all the cases.

The brief facts of the case are that the plaintiff Kanwar Jeotindra Singh and his brother Harindra Singh agreed to sell their land measuring 18.2 bighas along with the structure thereupon situate in village Garog, Tehsil and District Solan to defendant No.1 Nopany Charitable Trust for a total consideration of Rs.57,50,000/-. The sale deed in this behalf was executed on 26.9.1998. At the time of the sale as against the total sale consideration of Rs. 57,50,000/- only a sum of Rs.11,50,000/- was paid and the balance amount of Rs.46,00,000/- was agreed to be paid by the defendants in instalments. The defendants issued 18 post dated cheques in this behalf. These cheques were signed defendant No.3 as authorized signatory of defendant No.1. Out of these cheques, 3 cheques for Rs.6,25,000/- were encashed but 15 cheques were dishonoured. The total value of these cheques was Rs.39,75,000/-. The plaintiff issued notice to the defendant to pay the amounts due on account of dishonoured cheques but the said amount was not paid. The plaintiff filed 8 separate suits as the cheques had been dishonoured on different occasions. The details of the suits vis-à-vis F.A.Os in the present cases and the amounts involved in the suits are as follows:-

FAO No.	Civil Suit No. in trial Court.	Date of presentation of Suit in trial court.	Date of decision in trial court.	Cheque Nos.	Date of cheques	Amount Rs.	Dishonour memo intimation date vide SBOP Solan.
110/05	75-/FT/1/04/02	6/3/02	18/1/05	i)264013 ii)264014	8/3/99 18/3/99	2,50,000/- 2,50,000/-	2/6/99 2/6/99
111/05	30-/FT/1/04/01	6/12/01	30/11/04	i)264011 ii)264012	18/2/99 25/2/99	2,50,000/- 2,50,000/-	2/6/99 2/6/99
112/05	35-/FT/1/04/01	19/1/01	27/11/04	264003	7/12/98	3,25,000/-	2/6/99
113/05	74-/FT/1/04/02	6/3/02	20/1/05	i)264021 ii)264022	19/4/99 26/4/99	2,50,000/- 2,50,000/-	13/5/99 18/5/99
114/05	34-/FT/1/04/01	9/11/01	29/11/04	i)264009 ii)264010	25/1/99 8/2/99	2,50,000/- 2,50,000/-	2/6/99 2/6/99
115/05	27-/FT/1/04/01	8/11/01	29/11/04	I)264004 II)264006	14/12/98 28/12/98	3,25,000/- 3,25,000/-	2/6/99 20/4/99
116/05	76-/FT/1/04/02	6/3/02	19/1/05	i)264015 ii)264016	25/3/99 8/4/99	2,50,000/- 2,50,000/-	2/6/99 29/4/99
117/05	39-FT/1/04/01	9/11/01	30/11/04	i)264007 ii)264008	8/1/99 18/1/99	2,50,000/- 2,50,000/-	20/4/99 2/6/99

The defendants contested the suits. The execution of the sale deed was not denied. It was, however, stated that the plaintiff refused to deliver the possession or get the mutation attested and therefore, was not entitled to the balance amount. The defendants had also raised objections that 8 separate suits had wrongly been filed and the subsequent suits were hit by the provisions of Order 2 rule 2 CPC. Other objections were also taken. It is not necessary to deal with the same in detail. The learned trial Court held that the plaintiff was entitled to recover the cheques amount along with simple interest at the rate of 18% per annum from 26.4.1999 the date when the last

cheque was payable. The court also held that since the suits had been filed only on the basis of dishonour of cheques each separate dishonoured cheque gave separate cause of action to the plaintiff and, therefore, the subsequent suits were not barred under Order 2 rule 2 CPC since the cause of action is separate in all the suits. While dealing with the relief clause, the learned trial Court went on to hold that it had no territorial jurisdiction to decide the matter since the cheques had been dishonoured at Calcutta and only the Courts at Calcutta had jurisdiction. While taking this view, the learned trial Court has relied upon a judgment of a learned Single Judge of this Court in **Chanana Steel Tubes Pvt. Ltd.** versus **M/s Jaitu Steel Tubes Pvt. Ltd,** AIR 2000 HP 48. Thereafter the learned trial Court has ordered to return all the plaints under Order 7 Rule 10 CPC for presentation before the trial Court. Aggrieved against the said order passed in the suits, the plaintiff has filed the present appeals.

I have heard Shri Bhupender Gupta learned Senior counsel appearing on behalf of the plaintiff and Shri Harsh Khanna learned counsel appearing on behalf of the defendants.

Shri Bhupender Gupta has urged that the defendants had not raised any objections with regard to jurisdiction. He submits that no issue with regard to territorial jurisdiction of the Court was framed and as such the learned trial Court erred in rejecting the plaint on the ground of lack of jurisdiction. He further submits that the cheques

were issued in consequence of the sale deed with regard to property situate at Solan. The sale deed was also executed at Solan and the entire transactions took place at Solan. The amounts were payable at Solan and the cheques were delivered to the plaintiff at Solan. He submits that the trial Court had jurisdiction to hear the matter. He further submits that the normal rule is that the debtor should seek the creditor and since in the present case the creditor is based at Solan, it was the duty of the debtor to have paid the money at Solan. According to Shri Gupta, the cheques were a actually delivered at Solan, presented at Solan and, therefore, the mere fact that the account of the defendants was at Calcutta and the cheques were dishonoured at Calcutta would not exclude the jurisdiction of the Courts at Solan.

On the other hand, Shri Harsh Khanna submits that the parties even by their consent cannot confer jurisdiction upon any Court and, therefore, the mere fact that no objection has been raised would not by itself be a reason to set aside judgment of the learned trial Court. He further submits that at best only the first suit would be maintainable and the subsequent suits would be hit by the principle of Order 2 rule 2 CPC. Since the cause of action was only one, i.e. balance amount payable under the sale deed, therefore, according to him, the plaintiff has relinquished his claim qua the amount not claim in the first suit. In the alternative, he submits that if the plaintiff has come to the trial

court only on the basis of the cheques then the Court had no jurisdiction at Solan to hear the matter.

The first question which arises is with regard to the applicability of the judgment in **Chanana Steel** case *supra.* The learned Single Judge of this Court in paras 17 to 20 of the judgment held as follows:-

> "17. Since the cheques were dishonoured on presentation at Jaitu Mandi, mere delivery of cheques at Parwanoo would not give jurisdiction to this Court. Moreover, there were neither pleadings nor evidence to show that these cheques were delivered to the plaintiff at Parwanoo by defendant No.1. On the contrary PW2 has categorically stated:
>
> Both the defendants came to our office at Delhi and settled accounts and also issued cheques. These cheques are Ext. PW1/A and PW1/B….."
>
> 18. Therefore, as per the plaintiff's own showing the cheques were delivered to it by the defendants at Delhi and not at Parwanoo.
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> 19. This contention of the learned counsel is also without force. It has been held by a Division bench of the Punjab High Court in Piyara Singh Vs. Bhagwan Das, AIR 1951 Punj 33, that the technical rule of the debtor seeking the creditor is not applicable in India for the purpose of determining the local jurisdiction of the Courts because that would be engrafting something on Section 20, Code of Civil procedure. It was further held that in the case of

Negotiable Instruments, the Negotiable Instruments Act itself gives indication that the rule would not be applicable because of the provisions contained in Section 68, 69, 70, 78 and 81 of the Act. To the similar effect it has been held in Jawala Dass Ram Narain v. Nand lal, AIR 1951 Punj 128, J.N.Sahni v. The State of Madhya Bharat, AIR 1954 Madhya Bharat 94 (FB), and W.P.Horsburgh v. Chandroji Sambajirao, AIR 1957 Madhya Bharat 90.

20. On the facts and in the circumstances of the case, and in view of the above proposition of law, this Court has no jurisdiction to try the present suit. The issue is as such decided against the plaintiff and in favour of the defendants."

The reading of this judgment clearly shows that in the said case there was neither any pleading nor any averments that the cheques were delivered at Parwanoo or handed-over to the plaintiff at Parwanoo. In fact, the Court held that the cheques were delivered to the defendants at Delhi and not at Parwanoo. In view of this, it was not necessary for the Court to decide as to whether the Court had jurisdiction in case the cheques were delivered at Parwanoo. Relying upon the judgment of the Punjab and Haryana High Court in **Piyara Singh vs. Bhagwan** Das, AIR 1951 Punj 33, the Court held that the technical rule of the debtor seeking the creditor is not applicable in India for the purpose of determining the local jurisdiction of the Courts. It is obvious that the attention of the learned Single Judge of

this Court was not drawn to the earlier judgments of this Court in Shrimati **Pushpawati versus The United Commercial Bank Ltd and others,** 1980 ILR 230, wherein another learned Single Judge of this Court has clearly held after dealing with a number of judgments in detail that the doctrine of debtor seeking the creditor is applicable. In fact, the earlier judgment of this Court was upheld by the apex Court in 1983 **ILR HP (SC) 2.** Attention of the Hon'ble Judge was also not drawn to another judgment of this Court in **H.P. Small Industries & Export Corporation** versus **Export Credit and Guarantee Corporation Ltd.**, wherein this Court had held that the court having pecuniary jurisdiction over the area where the drafts were encashed also had the jurisdiction to entertain the suit. The judgment in Chanana Steel's case (supra) has been delivered by not taking into consideration the earlier judgment of this Court and therefore, I am of the opinion that the judgment of the learned Single Judge in **Chanana Steel's** case (*supra),* to this extent is per incurium and not binding.

The common law doctrine is that the debtor must find his creditor. Under English Law, if a particular place is appointed for the performance of a contract, it is the duty of the creditor to attend at the place named to receive payment; but if no place is appointed, the debtor is bound to find the creditor and tender him the money. Stated in different terms, if there is nothing contrary in the contract, there is

an implied promise, to pay the amount at the place where the creditor resides or carries on his business.

Section 49 of the Indian Contract Act, 1872 provides that where no place is fixed for the performance of a promise to pay money, it is the duty of the debtor to apply to the creditor to appoint a reasonable place for the performance of such promise. But the question that arises is what happens if the debtor does not apply to the creditor to appoint a place in terms of Section 49?

This question has been the subject matter of a number of decisions and there is divergence of judicial opinion on this question. On the one hand the courts have held that the common law rule that the debtor should seek the creditor should apply and on the other hand some courts such as Punjab and Haryana High Court held that the technical rule of common law should not be applied since it would abrogate the provisions of the CPC. However, the trend in more recent times is that even if the common law rule may not be extended to India as a rule of law, courts in India would, in contracts where the place of payment is not provided for expressly or by implication, infer that the parties had implied that payment must be made at the place where the creditor resided or carried on business. Reference in this behalf may be made to **M/s Manohar Oil Mills v. Bhawani Din Bhagwandin,** AIR 1971 All 326 **and Great Eastern Shipping Co. v. Union of India,** AIR 1971 Cal. 150.

The Calcutta High Court in **S.P. Consolidated Engineering Co.(P) Ltd. v. Union of India and another**, AIR 1966 Cal 259 has held as follows:-

> "I consider the rule to be universal in its application based, as it is, on justice and equity. It is emphatically not a technical rule of English law, wrongly made applicable to India. It is a beneficent rule, inflexible and is of universal application. It is not correct to consider this rule to be nothing more than a presumption, rebuttable by contrary evidence. If there is other evidence to indicate the place where the parties intended that the debt was payable, then the Court will hold that such place of payment has been indicated in the contract itself, though not expressly but by implication. It is only when the Court is unable to do so, that the occasion arises for applying this rule….. In my judgment once the Court finds that no place of payment is expressly stated in the contract nor is it possible to find such place of payment indicated in the contract by necessary implication, on the relevant evidence on record, the Court must apply the rule, as a rule of justice, equity and good conscience."

The Andhra Pradesh High Court in **Rajasthan State Electricity Board and others** v. **M/s Dayal Wood Works,** 1998 AP 381, has held that the common law rule is applicable even in cases of Negotiable Instruments.

De hors the application of common law doctrine of the debtor seeking the creditor, it is well settled that the place of appointment of

payment of any amount would be determined by taking into account (i) the terms of the contract; (ii) the attendant circumstances; (iii) the necessities of the case; and (iv) the provisions of the contract and the CPC.

As far as Negotiable Instruments are concerned, a suit may be filed at the place where bill was drawn, or where it was accepted or dishonoured, or where it was payable. The Madras High Court in **Winter v. Round** (1867) 1 MHC 202, held that where a promissory note was signed by the defendant at Secunderabad and delivered to the plaintiff at Madras, the Madras Court had jurisdiction. There can be no doubt that Courts in whose area of jurisdiction the cheque is dishonoured will have jurisdiction. That however does not mean that the Courts in whose jurisdiction the cheque was handed-over to the creditor for payment will not have jurisdiction. Cause of action is a bundle of facts. Section 20(c) of the CPC, provides that a suit may be filed at any place where the cause of action or part of the cause of action arose. This Court in **H.P.State Small Industries & Export Corporation** v**. Export Credit and Guarantee Corporation Ltd.** AIR **1992 HP 17,** held that where in an export transaction, the Export Corporation had provided crash credit facility to an exporter firm and payments towards losses were made by the firm as per agreement at the headquarters of the Corporation by way of demand drafts which were encashed by the Corporation at another place and a

dispute arose between the parties as to the liability for losses, the Court having pecuniary jurisdiction over the area where the demand drafts were encashed also had the jurisdiction to entertain the suit.

Reference in this behalf may also be made to a Division Bench judgment of the Madras High Court in **Arunachalam Chettiarand another** v. **Murugappa Chettiar and another,** AIR 1956 Madras 629, wherein the Court held as follows:-

> "If a note is executed at one place and delivered at another or is made payable at another place, part of the cause of action arises at each one of those places and the suit may be filed at any place at the option of the plaintiff."

The Patna High Court in **Gouri Shankar Bajoria** v**. Ram Banka,** AIR 1963 Patna 398 while dealing with a similar question held as follows:-

> " The cause of action in respect of a payment by cheque arises partly at the place where the cheque is issued or delivered and partly at the place where the cheque is honoured or dishonoured by the Bank."

I am in respectful agreement with the aforesaid proposition. It is clear that the cause of action also arises where the Negotiable Instrument is delivered.

Viewed from any angle whether following the principle of debtor seeking the creditor or by applying the principles of Section

20(c) of the Code of Civil Procedure, in my opinion, a part of the cause of action had arisen at Solan where the cheques were admittedly handed over to the plaintiff. One cannot lose sight of the fact that the cheques had been issued for payment to be made in regard to the land which was situated at Solan and the registered sale deed was also executed at Solan. Though the suit may have been filed on the basis of the dishonoured cheques, the attendant circumstances as to for what purpose the cheques issued cannot totally be ignored. In my considered opinion, the Court at Solan had jurisdiction to try the present suit.

While taking this view, I am also fortified by the changes in law. Section 21 of the Code of Civil Procedure Code as amended w.e.f. 1.2.1997 provides that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement and unless there has been a consequent failure of justice.

In the present case, the defendant had not raised any objection either in the written statement or at the time of framing of the issues or even at the stage of arguments. It is apparent from the judgment of the trial Court that the question with regard to territorial jurisdiction of the Court was raised by the trial Court itself. True it is that in the

present case it is the trial court which raised and decided the question of jurisdiction. Therefore, strictly speaking, the provisions of Section 21 (c) may not apply. However, the intention of the legislature in enacting Section 21(1) is absolutely clear and the intention is that in case the party does not raise any objection with regard to the place of suing during the course of trial then it should not be permitted to raise such an objection in an appeal or revision.

The idea is to avoid setting aside of a judgment on the technical ground of lack of territorial jurisdiction if both the parties have voluntarily submitted to the jurisdiction of a Court otherwise duly competent to hear the matter and have not raised any objection with regard to territorial jurisdiction. Therefore, in my opinion, the Court itself should not have raised this question with regard to jurisdiction at the time of hearing of the suit. When no party had raised any objection and no issue had been framed in this regard and therefore, the parties had not led any evidence on this score, the trial court itself should not have decided this question.

In the present case even today no dispute is raised with regard to the merits of the claim. The defendants have virtually admitted that they have re-pay the amount to the plaintiff, as such it cannot be said that there would have been any failure of justice if the trial court had only decided the suit on merits without going into the question of jurisdiction which admittedly was not raised before it. In case any

court at the time of hearing of the suit feels that it has no jurisdiction even though no objection in this regard has been raised, it must formally, by an order, inform the parties of such view and must give the parties adequate opportunity to meet this objection. If necessary it may frame an issue in this regard and permit the parties to lead evidence. This was also not done resulting in failure of justice.

The next objection raised by Shri Harsh Khanna is that only the first suit would be maintainable and subsequent suits filed are hit under Order 2 rule 2 CPC and the plaintiff is deemed to have relinquished his claim for the balance amount and has no merit in it.

It is no doubt true that if the plaintiff had filed the suit only on the ground that the plaintiff was to recover the balance sale consideration then probably only one suit should have been filed. However, the different post dated cheques as detailed above were dishonoured on different dates and each dishonoured cheque gave a separate cause of action. Out of 18 cheques issued, 18 cheques were dishonoured whereas 3 cheques were encashed. Therefore, in my opinion, separate suits could have been filed since each cheque was dishonoured on a different date which gave rise to a different cause of action. Therefore, the provisions of Order 2 rule 2 CPC or the principle underlying this rule would not be applicable to the facts and circumstances of the case.

No other point has been raised before me. On merits, the trial Court held that the plaintiff was entitled to recover principal sum on account of dishonoured cheques as mentioned in each suit as detailed hereinabove along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 when the last cheque was payable. However, I find that there is no ground to decree the suit against the defendant No.2. The property has been purchased by defendant No.1 and the cheques have been issued on behalf of defendant No.1 by defendant No.3. Defendant No.2 is only a trustee and cannot be held personally liable. As such, no decree can be passed against him.

In view of the above discussion, the judgments passed by the learned trial Court in Civil Suits No. 75-FT/1/04/02, 30-FT/1/04/01, 35-FT/1/04/01, 74-FT/1/04/01, 34-FT/1/04/01, 27-FT/1/04/01, 76-FT/1/04/02 and 39-FT/1/04/01 holding that it had no jurisdiction to try the suits and ordering return of the plaints are set aside.

Accordingly, in FAO No. 110 of 2005 , the judgment of the trial Court in Civil Suit No. 75-FT/1/04/02 dated 18.1.2005 is set aside and a decree for Rs.5 lacs along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 till realization, is passed in favour of the plaintiff and against defendant No.1 only.

Similarly, in FAO No. 111 of 2005, the judgment of the trial Court in Civil Suit No. 30-FT/1/04/01 dated 30.11.2004 is set aside and a decree for Rs.5 lacs along with simple interest at the rate of

18% per annum w.e.f. 26.4.1999 till realization, is passed in favour of the plaintiff and against defendant No.1 only; in FAO No. 112 of 2005 , the judgment of the trial Court in Civil Suit No. 35-FT/1/04/01 dated 27.11.2004 is set aside and a decree for Rs.3, 25,000/- along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 till realization, is passed in favour of the plaintiff and against defendant No.1 only; in FAO No. 113 of 2005 , the judgment of the trial Court in Civil Suit No.74-FT/1/04/02 dated 20.1.2005 is set aside and a decree for Rs.5 lacs along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 till realization, is passed in favour of the plaintiff and against defendant No.1 only; in FAO No. 114 of 2005 , the judgment of the trial Court in Civil Suit No. 34-FT/1/04/01 dated 29.11.2004 is set aside and a decree for Rs.5 lacs along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 till realization, is passed in favour of the plaintiff and against defendant No.1 only; in FAO No. 115 of 2005, the judgment of the trial Court in Civil Suit No. 27-FT/1/04/01 dated 29.11.2004 is set aside and a decree for Rs.6,50,000/- along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 till realization, is passed in favour of the plaintiff and against defendant No.1 only; in FAO No. 116 of 2005, the judgment of the trial Court in Civil Suit No. 76-FT/1/04/02 dated 19.1.2005 is set aside and a decree for Rs.5 lacs along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 till realization, is passed in

favour of the plaintiff and against defendant No.1 only and in FAO No. 117 of 2005 , the judgment of the trial Court in Civil Suit No. 39-FT/1/04/01 dated 30.11.2004 is set aside and a decree for Rs.5 lacs along with simple interest at the rate of 18% per annum w.e.f. 26.4.1999 till realization, is passed in favour of the plaintiff and against defendant No.1 only.

The Registry shall prepare decree sheets in all the aforesaid appeals. The plaintiff shall also be entitled to the cost of litigation throughout. For the purpose of the present proceedings, the lawyer's fee is assessed at Rs.20,000/- (total in all cases).

May 26, 2006 (Deepak Gupta),
s. Judge.

THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 117 of 2005

Judgment reserved on: 8.5.2006

Date of Decision: May 26, 2006.

Kanwar Jeotindra Singh …Appellant.

Versus.

Nopany Charitable Trust & anr. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. Bhupender Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate.**

For the Respondent(s): **Mr. Harsh Khanna, Advocate,**

Deepak Gupta, J.

For judgment, see judgment of even date rendered in FAO No.110 of 2005, titled **Kanwar Jeotindra Singh** versus. **Nopany Charitable Trust & anr.**

May 26, 2006. **(Deepak Gupta), J.**