

defendant/appellant to lend some amount as a loan for enhancement of the business of finance run by him in the name & style of M/s B. S. Finance Company and that the defendant/appellant had also agreed to pay interest @ 2% per month on the said amount. It was averred in the plaint further that in discharge of this liability, the defendant/appellant, issued two post dated cheques to the plaintiff/respondent, bearing No. 692102 dated 30.10.2018 for a sum of Rs. 1,32,836/- and cheque bearing No. 692103 dated 31.10.2018 for a sum of Rs.1,32,836/- both payable at Punjab & Sind Bank, West Patel Nagar Branch, New Delhi. The defendant/appellant was stated to have paid the agreed interest on the aforesaid loan amount in time and in October, 2008 when the plaintiff/ respondent, asked the defendant/appellant about the principal amount, the defendant/appellant told the plaintiff/ respondent to present the aforementioned cheques which were presented by the plaintiff/respondent on 1.11.2008 but the cheque got dishonoured and on the defendant/appellant, having been informed of the dishonour, the defendant/appellant assured the plaintiff/ respondent, that the defendant/appellant, would make the payment in cash within a short time after arrangement of the said amount and also asked the plaintiff/respondent, not to present the second cheque.

3. It is indicated through the judgment of the learned Trial Court dated 19.10.2016 that as per the averments made in the plaint, the said promises were not kept by the defendant/appellant and the defendant/appellant, rather gave two other cheques to the plaintiff/respondent bearing No. 305824 dated 20.3.2009 for a sum of

Rs.40,000/- and 305825 dated 20.3.2009 for a sum of Rs.40,000/- both payable at the Punjab & Sind Bank, Patel Nagar Branch, New Delhi which were also dishonoured on presentation the first time but on the assurance of the defendant/appellant, cheque No. 305824 dated 20.3.2009 was presented again and it was encashed on its presentation and the defendant/appellant also paid a sum of Rs.40,000/- in cash against the dishonoured cheque bearing No. 305825 and that the defendant/appellant herein thus made a total payment of Rs.80,000/. It was thus contended on behalf of the plaintiff/ respondent, that the sum of Rs.1,85,000/- was outstanding against the principal amount and on the plaintiff/ respondent, demanding the payment against the sum of Rs.1,85,000/- and on persistent requests, the defendant/appellant issued two further cheques bearing Nos. 436956 dated 10.4.2009 for a sum of Rs.25,000/- and 436957 dated 17.4.2009 for a sum of Rs.30,000/- in the name of M/s. Beauty Garments, the sole proprietorship firm of the plaintiff/ respondent. The plaintiff/ respondent presented the said cheque bearing No. 436956 dated 10.4.2009 for encashment but the same was dishonoured.

4. The plaintiff/ respondent is indicated to have made several requests to the defendant/appellant to make the balance payment but the appellant is stated to have avoided making the said payment on one pretext or the other and when a legal notice dated 2.12.2009 was sent to the defendant/appellant, he refused to receive the same. However, the notice sent through UPC was duly served upon the defendant/appellant but the same was to no avail.

5. The plaintiff/ respondent is indicated to have asserted before the learned Trial Court that the total liability towards the defendant/appellant was of Rs.2,44,200/- (Rs.1,85,000/- as principal amount + Rs.59,200/- towards interest) as on 31.10.2010.

6. The defendant/appellant contended that the said cheques were issued towards payment of insurance and not in discharge of any alleged loan amount or any transaction in as much as he had not borrowed any amount from the plaintiff/ respondent and thus there was no question of payment of any interest.

7. The defendant/appellant further claimed that he is one of the partners of M/s B. S. Finance Company, Office at 215/1A (FF), New Patel Nagar and that the plaintiff/ respondent and he, the defendant/ appellant were both residing in the same colony and that the plaintiff/ respondent had been working as an insurance advisor.

8. As per the observations in the impugned judgment of the learned Trial Court, the plaintiff/ respondent approached the defendant/appellant in the year 2008 and suggested that there were various investment schemes and in case the defendant/appellant invests a big amount, the said amount would be doubled within a short time and one of the said attractive investment scheme as allegedly suggested by the plaintiff/ respondent was that if defendant/appellant made investment of a sum of Rs.2,65,000/-, he would get a handsome yield within a short time and in this manner the plaintiff/ respondent had trapped the defendant/appellant in his net by luring him, as a consequence of which the defendant/appellant had issued two cheques of Rs.1,32,836/- each bearing No. 692102 and

692103 from his account and the defendant/appellant alleged that the plaintiff/ respondent had *mala fide* intentions and as such had got issued the cheques in his own name instead of the name of the Insurance Company.

9. The defendant/appellant further claimed that he was not in a good financial condition to invest such a huge amount and accordingly got the payment of one cheque bearing No. 132836- stopped from his bankers and informed the plaintiff/ respondent about the same and assured the plaintiff/ respondent that he would make the cash payment of the dishonored cheques and made a payment of Rs.1,00,000/- to the plaintiff/ respondent on 4.11.2008 and gave another sum of Rs.25,000/- in cash on 25.11.2008 and also got issued two cheques of Rs. 40,000/- cleared from his account on 20.03.2009 and 15.4.2009 respectively and in this manner he invested a sum of Rs.2,05,000/- through the plaintiff/ respondent who was allegedly working as an insurance agent but the plaintiff/ respondent did not issue any receipt for the same nor did he return the dishonoured cheques to him.

10. *Inter alia*, the appellant contended that the plaintiff/ respondent avoided to issue any receipts of the investments qua the dishonoured cheques but when the defendant/ appellant pressurized him, he handed over one policy bearing No.115944990 dated 5.2.2009 for an assured sum of Rs.3,75,000/- and on the defendant/ appellant having demanded the receipt of the amount of Rs.2,05,000/- invested with the plaintiff/ respondent and having also sought the return of the dishonoured cheques, the plaintiff/ respondent was enraged.

11. The defendant/appellant *inter alia* contended before the learned Trial Court that he made a complaint to the Commissioner of Police and also sent copies thereof to various higher authorities and also simultaneously sought information from the LIC of India under the RTI Act and in a reply dated 20.12.2010 received from the LIC the defendant/appellant had been apprised that his request was transferred to the Manager (CRM/CPIO Delhi Divl Office) for further necessary action.

12. The defendant/appellant contended that there was no transaction of loan between him and the plaintiff/ respondent and that a false and frivolous story of a loan transaction had been concocted by the plaintiff/ respondent. The defendant/appellant also denied having received any legal notice from the plaintiff/ respondent.

13. The learned Civil Judge-01, (West) vide the judgment dated 19.10.2016 decided the three issues framed to the effect:

- (1.) *Whether the suit of the plaintiff is bad as there is no privity of contract between the plaintiff and the defendant? OPD*
- (2.) *Whether the suit is bad for non-joinder of necessary parties? OPD*
- (3.) *Whether the plaintiff is entitled to recovery of amount of Rs.2,44,200/- along with pendente lite and future interest @ 24% p.a. from 01.11.2010 till the realization of said amount? OPP*
- (4.) *Relief, if any.,*

in favour of the plaintiff/ respondent, and whilst holding that there existed a privity of contract between the parties and that the suit was not bad for non-joinder of any necessary party, coupled with the

factum that the alleged loan had not been extended to a firm nor was the firm a guarantor of the loan transaction and that the firm of the defendant/appellant had nothing to do with the alleged investment made by the defendant/appellant with the plaintiff/ respondent which was purportedly in a personal capacity, the learned Trial Court qua issue No.3 observed to the effect:-

“ 21. ISSUE NO.3

3. Whether the plaintiff is entitled to recovery of amount of Rs.2,44,200/- alongwith with pendente lite and future interest @24% p.a from 01.11.2010 till the realization of said amount ?

The onus to prove this issue was upon plaintiff.

The plaintiff has alleged that despite taking loan of Rs.2,65,000/- from him in March 2008, defendant has only returned Rs.80,000/- as part payment of principal amount. On the other hand, defendant has contended that he had not taken any loan from plaintiff but infact plaintiff had taken Rs.2,05,000/- from him for investment purpose by luring him that the amount would get doubled within a short time, as plaintiff was an insurance advisor.

22. As far as evidence on record is concerned, plaintiff has no documentary proof of extending loan of Rs.2,65,000/- to the defendant but he has relied on two cheques Ex. PW1/1 and Ex. PW1/2 of Rs.1,32,836/- each which were allegedly handed over to him by defendant as post dated cheques towards re-payment of loan amount. Though defendant admits having issued cheques Ex. PW1/1 and Ex. PW1/2 to the plaintiff but his contention is that the same were given for the purpose of investment in a scheme as proposed by plaintiff. However the name of the said scheme was not known to the defendant. It is quite obvious that no conclusive evidence has been produced by either of the parties to prove the purpose for which the above cheques

Ex. PW1/2 and Ex. PW1/2 were issued by defendant to the plaintiff and it has to be deduced from surrounding circumstances.

23. However in view of the fact that defendant has admitted having issued the aforesaid cheques in favour of plaintiff, the statutory presumption of Sec 139 of Negotiable Instrument Act is in favour of plaintiff which pre supposes that cheques are issued in discharge of a legally enforceable debt or liability. Sec 139 of Negotiable Instruments Act reads as under :-

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

*It has been held in **Hitan P. Dalai v. Bratindranath Banerjee**(2001) 6 SCC 16 that :-*

"Because both Sec 138 and 139 require that the Court 'shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn,.....it is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption has been established."

*Infact, it has been further held by the Hon'ble Supreme Court in **Rangappa V. Sri Mohan** AIR 2010 SC 1898 that "the presumption mandated by sec 139 of the Act indeed includes the existence of a legally enforceable debt or liability." However at the same time it has also been observed in the above judgment of **Rangappa (Supra)** that the presumption "is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested."*

24. Though both the above judgments have been passed in criminal complaint cases u/s 138 of Negotiable Instruments Act, however the legal presumption remains the same, both for civil and criminal cases. Hence, it was for the defendant to dispel the initial legal presumption of liability existing in favour of plaintiff through preponderance of probabilities. However defendant has failed to discharge this onus except stating that he had given the cheques for investment in a scheme.

25. In fact, there is also some contradiction in the above contention raised by the defendant. On the one hand, he submits that plaintiff had lured him for making investment of Rs.2,65,000/- in an attractive investment scheme. However, on the other hand, he submits that he was not in a good financial condition to invest such a huge amount, so he got payment stopped. Under such circumstances, the natural question which arises is why did defendant issue the cheques when he was not having money to invest. Furthermore, the fact that defendant was admittedly not in a good financial position, corroborates the contention of plaintiff that defendant may have taken loan from him for enhancement/expansion of his business.

26. At this stage, it is also worth observing that defendant is not a layman and he himself was engaged in the business of finance. He is well aware of the implications and consequences of issuing cheques to another person. Such a person will not issue cheques at a drop of hat. Further he must also be well aware of the fact that there is no such scheme to double the money in a very short period of 6-7 months as has also been admitted by him in his cross-examination.

27. Infact the admitted facts are that defendant had issued not one but six cheques to plaintiff including cheques Ex. PW1/3 and Ex. PW1/4 but none of those cheques was issued in the name of the company where investment was to be made or even specifying the name of the scheme. The cheques are in the name of plaintiff or in the name of

proprietorship firm of plaintiff but not in the name of investment company. This fact also supports the contention of plaintiff that cheques were issued in discharge of existing financial liability.

28. As per defendant, besides making the admitted payment of Rs.80,000/- to plaintiff, he had also made payment of Rs.1 lakh in cash on 04.11.2008 and another sum of Rs.25,000/- on 25.11.2008 but he is not having any receipt of plaintiff qua the said payments. However it is also pertinent to mention that defendant has not filed any counter claim against plaintiff or even a separate suit for recovery of amount of Rs.2,05,000/- which plaintiff allegedly took from him for the purposes of investment, by deceiving him. Not even a legal notice has been served on plaintiff in this regard. All the above facts falsify the claim of defendant of having made investment in the insurance scheme of plaintiff.

29. Though even if we add the two figures of Rs. 1,32,836/- each as are mentioned on the above two cheques, the figure of Rs.2,65,000/- will not be arrived at, however the defendant has himself mentioned in his written statement that plaintiff had asked him to invest Rs. 2,65,000/- upon which he issued those two cheques. So he cannot now dispute the figure of Rs.2,65,000/- as was argued by defendant's counsel during final arguments.

30. The Law is well-settled that Civil suits are decided on the basis of preponderance of probabilities which is strongly in favour of plaintiff in the present case. Accordingly, the plaintiff has been able to prove having extended loan of Rs.2,65,000/- to defendant. However, the interest @ 24 % p.a. as has been claimed by plaintiff is highly exorbitant. There is no proof that any such rate of interest was agreed between the parties. The plaintiff admittedly does not have any money lending license and the loan was extended to defendant due to friendly relations between the parties. In the facts at hand, in my view considered view, interest @ 10 % per annum would be just and fair.

Accordingly this issue is also decided in favour of plaintiff against the defendant.”,

and thus decreed the suit of the plaintiff/ respondent for a sum of Rs.1,85,000/- after deducting part payment of Rs.80,000/- from the total loan amount of Rs.2,65,000/-) along with interest @ 10% per annum which the plaintiff/ respondent it was held, could recover from the defendant/appellant from April 2009 onwards (since the part payment of Rs. 80,000/- was made in March 2009) till the date of its actual payment by the defendant/appellant. The costs of the suit were also awarded to plaintiff/ respondent.

14. The first Appellate Court vide its impugned judgment upheld the finding of the learned Trial Court and observed to the effect:

“ 14. The case of the plaintiff is that on 31.03.2008, he advanced the loan of Rs. 2,65,000/- to the defendant in cash on the interest @ Rs. 2% per month. In order to discharge his liability, the defendant issued two post dated cheques bearing no. 692102 & 692103, dated 30.10.2008 & 31.10.2008, respectively, for sum of Rs. 1,32,836/- each, both payable at Punjab & Sind Bank, West Patel Nagar, New Delhi. On the assurance of the defendant, the plaintiff presented the cheque bearing no. 692102 for encashment, however, the said cheque got dishonoured. On the request of the defendant, the plaintiff did not present the second cheque bearing no. 692103. The defendant in order to discharge his liability again issued two cheques bearing no. 305824 & 305825, both dated 20.03.2009 for Rs. 40,000/- each, drawn at Punjab & Sind Bank, West Patel Nagar, Delhi. The cheque bearing no. 305824 got encashed, however, the

other cheque 305825 got dishonoured. Thereafter, the defendant paid Rs. 40,000/- in cash to the plaintiff. The defendant again issued two cheques bearing no. 436956 & 436957, both dated 10.04.2009 & 17.04.2009 for Rs. 25,000/- each in the name of plaintiff's proprietorship concern. On presentation, the cheque bearing no. 436956 again got dishonoured. On the request of the defendant, the cheque bearing no. 436957 was not presented for encashment by the plaintiff.

The defendant has not disputed issuance of afore-mentioned 6 cheques in favour of plaintiff. However, he has stated that plaintiff was insurance advisor and allured the defendant by saying that if defendant would invest money with the plaintiff, his amount would get doubled in a short span of time. Therefore, on the allurement of the plaintiff, the defendant issued the afore-mentioned cheques in favour of the plaintiff on the belief that the amount of the defendant would get doubled in a short period of time.

15. As already mentioned that defendant has not disputed issuance of the 6 cheques in favour of plaintiff. Ld. Trial Court has rightly said that Section 138 & 139 of NI Act are applicable in both civil and criminal cases. The statutory presumption u/s 139 NI Act is in favour of the plaintiff which presumes that the cheques issued in favour of the holder of the cheques were in discharge of legal liability unless the contrary is proved. Hence, the burden was upon the defendant to prove that the cheques in question were not issued by him in discharge of legal liability.

16. The defendant is taking contradictory stands regarding the issuance of cheques by him in favour of plaintiff. In para no. 4 of the written statement

he has stated that the six cheques issued by him in favour of the plaintiff were in lieu of the insurance policy taken by him from the plaintiff. On the other hand, in the subsequent paras of the written statement he has stated that plaintiff being insurance advisor allured the defendant for investing money with him (plaintiff) and on the allurements of the plaintiff, the defendant invested his money with the plaintiff on the belief that the amount invested by the defendant would get doubled in a short period of time. Undoubtedly, the defendant is taking two contradictory stands regarding admitted issued cheques in favour of plaintiff. As at one place, he has stated that the cheques were issued by him for the purpose of investment on the belief that his amount would get double in a short period and on the other hand, he is saying that cheques were issued in lieu of the insurance policy taken by him from the plaintiff. It seems that defendant is blowing hot and cold in the same breath by taking contradictory pleas. Otherwise also, the defendant during the entire trial could not give name of any scheme in which the plaintiff would have asked him to invest money for getting the said money doubled. The defendant himself is a financier and knows all the nitty-gritty of the finance business. He has admitted during his cross examination that there could not be any scheme in which the amount gets doubled in a short period of 6-7 months. During cross examination, defendant has stated that he was running with the financial crises during the relevant period. Keeping in mind the contention of defendant regarding financial crises and his finance background, this court finds it surprising that a person who himself is dealing with the same subject would issue the cheques of huge amount that too in a situation when he is facing the financial crises.

17. Furthermore, admittedly the cheques were issued by the defendant either in the individual name of the plaintiff or in the name of plaintiffs proprietorship concern but not in the name of any investment scheme or in the name of alleged insurance company which further creates doubt on the plea of the defendant that those cheques were issued by him for the purpose alleged by him. During cross examination, the defendant himself placed on record the insurance policy dated 05.02.2009 Ex. DW-I/P-1, stated to be issued by plaintiff to the defendant. The said insurance policy clearly shows that it was issued for 21 years in which monthly premium to be paid by the defendant was of Rs. 1531/-. During cross examination, the plaintiff has categorically deposed that the premium of Us. 1531/- used to be debited from the defendant's account through ECS. The defendant has not controverted this statement of the plaintiff during his evidence. Moreover, it is not the case of the defendant that he issued the cheques in question in advance for the said insurance policy and if it was so, then those cheques necessarily should be in the name of LIC but not in the individual name of plaintiff or his proprietorship concern. Hence, the defendant has miserably failed to prove that the cheques in question issued by him in favour of the plaintiff, were for investment purpose or for the insurance policy.”

15. The contention of the defendant/appellant that the learned Trial Court had not considered the factum of the suit being barred under the provisions of Punjab Registration of Money Lender Act was also repelled by the learned First Appellate Court observing to the effect:-

“ 19. It is settled law that no line can be read in isolation. The party cannot be allowed to take advantage of any general statement given by the opposite party. The above extract portion of cross examination of PW-1 clearly indicates that the general question was put to him by the defendant's counsel whether the plaintiff takes receipt whenever he gives any amount to any person. The same was answered by PW-1 in a very casual manner by saying that "when he gives any amount to anybody, he usually takes the receipt". The contention of the defendant that the above extracted portion of the cross examination of PW-1 is showing that he was in the money lending business is totally misplaced as the said cross examination of PW-1 by no stretch of imagination even remotely suggest that plaintiff was in the business of money lending. Furthermore, the defendant, during trial, never took the plea that the plaintiff is in the business of money lending, rather he himself seated that the plaintiff is an insurance advisor and in the business of readymade garments. The defendant has not placed anything on record to substantiate his contention that plaintiff was in the business of money lending. In view of this. the Punjab Registration of Money Lending Act does not attract to the facts of the case.”

16. It was also observed by the First Appellate Court to the effect:

“ 20. The other ground of challenging the impugned judgment/decreed is that Ld. Trial Court itself has observed in the judgment that the

plaintiff has not placed on record any proof of extending the loan of Rs. 2,65,000/- to the defendant then the finding and judgment of Ld. Trial Court decreeing the suit of the plaintiff is erroneous. I do not agree even with this argument of the defendant. Ld. Trial Court has rightly said that the civil suits are decided on the preponderance of probabilities and while keeping in mind the said principle of law, Ld. Trial Court has rightly decreed the suit of the plaintiff for the reasons given by the Ld. Trial court and also for the reasons discussed in preceding paras of this judgment by this court.”

17. Arguments were addressed on behalf of the appellant by the learned counsel for the appellant seeking to contend that the orders of the learned Trial Court and the First Appellate Court were wholly infirm in as much as the issue in relation to money lending and running a money lending business by the respondent herein was not considered by the said Courts nor was the aspect of maintainability of the suit considered and it was sought to be contended on behalf of the appellant/defendant to the civil suit that the followings questions of law arose for consideration:

“A. Whether suit filed by the respondent/plaintiff is barred under section of 3 of Punjab Registration of Money Lenders' Act?

B. Whether question of law regarding maintainability of the suit can be raised at the stage of first appeal?

*C. Whether appellant rebuttal (sic?) (**rebutted**) the presumption under section 139 of the N.I Act, when respondent failed to prove that any loan was given to the appellant?*

D. Whether issuing of cheque is amount (sic?) (amounts) to presumption that cheque is issued for re-payment of loan?

E. Whether if respondent claimed that he was charging the monthly interest, can it be a friendly loan or doing money lending covered under Punjab registration of Money Lenders' Act?"

18. Apparently, the factum of the respondent allegedly running a money lending business would require determination of facts and evidence which is not within the domain of this Court in terms of Section 100 of the CPC, 1908, as amended, RSA No. 160/20-18 and thus no issue in relation thereto is necessitated, and thus no such issue as at Serial No.A sought to be framed by the plaintiff/respondent herein can be framed and is thus not framed.

19. As regards issue No. ' B', sought to be framed to the effect:

B. Whether question of law regarding maintainability of the suit can be raised at the stage of first appeal?

20. The aspect of issue of law of the suit being barred under the Provisions of Punjab Registration of Money Lenders Act has already been taken into account by the First Appellate Court and has been negated on the basis of the evidence led during the trial before the learned Trial Court and does not need any further reargitation.

21. As regards issue No. 'C' which reads to the effect:

C. Whether appellant rebuttal (rebutted) the presumption under section 139 of the N.I Act, when respondent failed to prove that any loan was given to the appellant?

22. The learned Trial Court and the First Appellate Court through their impugned judgments dated 19.10.2016 and 29.9.2018 have concurrently held that on a pre-ponderance of probabilities, it was apparent that the defendant/appellant had failed to dispel and rebut the legal presumption of liability arising against him and in favour of the plaintiff/ respondent in view of the cheques issued bearing No. 692102 and 692103 for Rs.1,32,836/- each issued by the defendant/appellant in favour of the plaintiff/ respondent in his own name and not in the name of any investment company, - as it has not been discharged nor rebutted in any manner and thus the issue sought to be formulated as issue No. 'C' does not arise in the instant case. The learned First Appellate Court has also categorically observed to the effect that the insurance policy dated 5.2.2009 Ex.PW1/P-1 stated to have been issued by the plaintiff/ respondent to the defendant/appellant was for a period of 21 years in which the monthly premium to be paid by the defendant/appellant herein was of Rs.1531/- which amount was debited from the account of the defendant/ appellant herein through ECS which was not prevented by the defendant/appellant and the learned First Appellate Court also observed to the effect that it was not the case of the defendant/appellant that he had issued the cheques in question in advance for the insurance policy and if it was so, then those cheques should have been issued in the name of LIC and not in the individual name of the plaintiff or his proprietorship concern

and the defendant had miserably failed to prove that the cheques in question were issued by the defendant/appellant in favour of the plaintiff/respondent herein for investment purpose or for the insurance policy.

23. Thus, no such issue as issue No. 'C' sought to be framed arises as any substantial question of law in the instant case which is in fact based purely on facts qua which there are concurrent findings of the learned Trial Court and the First Appellate Court.

24. As regards issue No. 'E' which reads to the effect,

"Whether if respondent claimed that he was charging the monthly interest, can it be a friendly loan or doing money lending covered under Punjab registration of Money Lenders' Act?",

the findings of the learned Trial Court are categorical to the effect that there was no evidence that the defendant/appellant had placed on record to substantiate his contention that the plaintiff/ respondent was in the business of Money Lending and the testimony of PW-1 the plaintiff/ respondent relied upon on behalf of the defendant/appellant reads to the effect:-

"I am an income tax payee and regularly deposit my ITR to the concerned authority. I had not deposited any document relating to my income in the court. When I give any amount to anybody, I usually take receipt from him. I used to give the loan to some person then, due to believe (belief) and faith having in that person. I do not use to get any signatures or receipt from him",

it has rightly been upheld by the First Appellate Court to be to the effect that the same cannot be read in isolation and that the defendant/appellant cannot be allowed to take advantage of any general statement given by the opposite party and that the testimony of PW-1, the plaintiff i.e. the respondent to the present appeal did not bring forth that the defendant was running any business of money lending and that thus merely because interest was sought to be charged by the plaintiff on the loan given to the defendant/appellant, the same does not necessitate the framing of issue No. 'E'.

25. As regards the issue No. 'D' sought to be formulated by the appellant which reads to the effect:

D. Whether issuing of cheque is amount (sic) (amounts) to presumption that cheque is issued for re-payment of loan?

26. The presumption of law on issuance of a cheque in favour of the holder of the cheque, unless the contrary is proved that the holder of the cheque received the cheque of the nature referred to in Section 138 for the discharge in whole or in part of any debt or other liability, exists in law in terms of Section 139 of the Negotiable Instruments Act, 1881 as rightly held by the learned Trial Court and upheld by the First Appellate Court, and thus the formulation of the question of law to submit as to whether the issuance of a cheque amounts to a presumption that the cheque was issued for repayment of a loan as sought by the appellant does not arise in relation to repayment of any debt or other liability falling within the ambit of Section 139 of the Negotiable Instruments Act, 1881 itself. Thus the said question of law

‘D’ sought to be formulated as a substantial question of law also thus does not arise in the instant case.

27. In the circumstances thus of the instant case, no substantial question of law having arisen or being involved which is *per se* the *sine qua non* for exercise of jurisdiction under Section 100 of the Code of Civil Procedure 1908 (as amended), the present RSA 160/2018 does not lie on the ground of stated erroneous findings of fact based on appreciation of the relevant evidence as laid by the Hon’ble Supreme Court in ***Union of India v. Ibrahim & Others : (2012) 8 SCC 148*** and thus the RSA 160/2018 assailing the judgment dated 29.9.2018 of the learned First Appellate Court (Additional District Judge-03, Tis Hazari Court, Delhi) in RCA No. 61274/2016 and the judgment dated 19.10.2016 of the learned Civil Judge-01 (West), Tis Hazari Courts, in SCJ No. 608748/2016 and the accompanying application being CM Nos.46496/2018 are thus dismissed.

ANU MALHOTRA, J.

NOVEMBER 14, 2018/SV