

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 12 OF 2024

Sri Madan Mohan Saha,
S/o Lt. Nishi Kanta Saha, resident of 60/B/12,
H.C. Banerjee Lane, Haridas Avenue, Koonagar,
Hoogly, West Bengal-712235.

... **Appellant**

Vs.

Sri Nirendra Saha,
S/o Lt. Prasanna Kumar Saha,
Resident of Krishnanagar, Thakur Palli Road,
P.S. West Agartala, P.O. Agartala,
Dist. West Tripura.

.... **-Respondent.**

For the appellant : Mr. Dipak Deb, Advocate.

For the respondent : Mr. Ratnadeep Paul, Advocate.

Date of hearing & date of
Delivery of judgment : **25.02.2026**

Whether fit for reporting : No

**HON'BLE JUSTICE DR.T. AMARNATH GOUD
HON'BLE MR.JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT AND ORDER (ORAL)

(Dr.T.Amarnath Goud, J)

This appeal under Section 96 of the Civil Procedure Code is directed against the judgment and decree dated 02.12.2023 and 12.12.2023 respectively, passed by learned Civil Judge (Sr. Division), Court No.4, West Tripura, Agartala in Case No. M.S. 25/2019.

2. The short facts as emerged from the plaint of the original plaintiff [the respondent herein] are that the plaintiff and the defendant are well known to each other and they had a cordial relation with each other out of business transactions. The defendant had a shop at Agartala Jagat Bazar, Hariganga

Basak Road under the name and style as “Joram Udyog”. He had closed the said shop in the year 2017 and left Agartala for Kolkata. It is averred that prior to his leaving from Agartala, the defendant in urgent need of money had taken a loan of Rs.14,00,000/- [Rupees fourteen lakhs] only from the plaintiff for his business purpose in two separate spells. On the first spell, i.e. on 16.06.2016, he took an amount of Rs.12,00,000/- and on the second spell, i.e. on 20.06.2016, took an amount of Rs.2,00,000/- with a promise to return the said amount to the plaintiff by 31.10.2017. But, the defendant did not repaid the loan amount to the plaintiff by that stipulated date. The plaintiff, considering such state of affairs, entered into an notarized agreement with the defendant on 25.02.2017 and as per the terms and conditions of the said agreement, the defendant issued three cheques- one bearing No.842645, dated 04.06.2018, for an amount of Rs.10,00,000/- maintained in the State Bank of India, Agartala Branch, (2) bearing Cheque No.133569, dated 04.06.2018, for an amount of 3,00,000/- and (3) Cheque bearing No.186257, dated 04.06.2018, for an amount of Rs.1,00,000/- maintained in Axix Bank Ltd. Agartala Branch. As per the terms of the agreement, the aforesaid cheques were kept by the plaintiff as security for the aforesaid loan amount of Rs.14,00,000/-. It was also agreed between the parties that if within a period of one year from the date of agreement the plaintiff demands the aforesaid money from the defendant, the defendant would be bound to return the said money within one month from the date of demand, otherwise the plaintiff would have the liberty to encash the aforesaid three cheques and realise the aforesaid loan amount. Subsequently, the plaintiff demanded the defendant to return the aforesaid loan amount of Rs.14,00,000/- by serving a legal notice dated 06.02.2018 through his Advocate, but the loan money was not returned back to the

plaintiff within one month from 06.02.2018. Thereafter, the plaintiff as per the terms and conditions of the agreement presented the said cheques on 04.06.2018 with the defendant's bankers but the said cheques were dishonoured and returned to the plaintiff due to insufficient fund in the account of the defendant. It is also asserted in the plaint that as per the agreement, the extended period of two years to return the loan amount to the plaintiff was ended on 25.02.2019. It was also pleaded that the plaintiff served more two legal notices- one on 25.06.2018 and another on 18.03.2019 to the defendant, but there was no response from the defendant side.

3. It is further averred that the cause of action first arose on 06.03.2018 when the defendant did not return the said amount after a lapse of one month from the date of demand was made by the plaintiff through legal notice dated 06.02.2018 and the second cause of action arose on 25.02.2019 when the extended period of two years to return the said loan amount came to an end as per agreement dated 25.02.2017. Hence, the plaintiff filed the instant suit seeking a decree declaring that the plaintiff is entitled to Rs.14,00,000/- along with interest @ 9% per annum from 06.03.2018 till realization.

4. Defendant contested the suit by filing written statement denying all the averments made by the plaintiff in the plaint. In the written statement, the defendant admitted the fact that he issued three cheques as security for payment of a loan amount. He averred that he repaid the entire loan amount to the plaintiff. It is also pleaded in the written statement that the plaintiff intentionally harassed him and gave pressure upon him for encashment even after payment of the loan amount. His further plea was that a false case was filed against him.

5. Having considered the pleadings of both the parties, the learned trial Court framed as many as five issues, which read thus—

(i) *Whether the suit is maintainable in its present form and nature?*

(ii) *Whether there is any cause of action for filing of the suit?*

(iii) *Whether the defendant issued 3 (three) numbers of (a) cheque bearing number 842645 dated 04.06.2018 of a sum of Rs.10,00,000/-, (b)cheque bearing number 133569 dated 04.06.2018 of a sum of Rs. 3,00,000/- and (c)cheque bearing number 186257 dated 04.06.2018 of sum of Rs. 1,00,000/- in order to discharge of his legally enforceable debt of Rs. 14,00,000/- as per the agreement dated 25.02.2017?*

(iv) *Whether the defendant has paid the entire amount of Rs. 14,00,000/- within a period of one year as per the agreement dated 25.02.2017?*

(v) *Whether the plaintiff is entitled to the decree/reliefs as prayed for?*

6. During trial, the plaintiff examined himself as PW-1 and another Sri Dilip Sarkar as PW-2 and some documents have been proved and marked exhibits. On the other hand, the defendant examined himself as DW-1 and also examined another witness as DW-2, but did not adduce any documentary evidence.

7. After perusing the pleadings of the parties and upon evaluating the evidence on record, learned trial Court decreed the suit in favour of the original plaintiff.

8. Being aggrieved by and dissatisfied with the impugned judgment and decree, the original defendant, i.e. the appellant herein has approached this Court with this first appeal.

9. Heard Mr. D. Deb, learned counsel appearing for the appellant and also heard Mr. R. Paul, learned counsel appearing for the respondent.

10. Mr. Deb, learned counsel for the appellant submits that the learned trial Court without applying the mind wrongly and illegally has come

to a conclusion in decreeing the suit in favour of the plaintiff. He also submits that the notarized agreement is not a sole evidence to come to a definite finding that the appellant had borrowed the loan amount from the respondent as the said agreement was not a registered document and the Scribe and other attesting witnesses were not examined by the respondent-plaintiff. According to learned counsel, the appellant had repaid the entire amount to the respondent well in time and the respondent intentionally put pressure upon the appellant to face an unnecessary harassment and therefore, he prays for setting aside the impugned judgement of the learned Court below.

11. On the other hand, learned counsel, Mr. Paul appearing for the respondent-plaintiff unequivocally submits that the learned Court below has rightly adjudicated the matter and finally came to an affirmative conclusion on the basis of cogent and convincing evidence as produced from the side of the respondent-plaintiff. He, therefore, prays for dismissal of the appeal.

12. We have analytically gone through the entire circumstances which led the plaintiff-respondent to file a money recovery suit against the defendant-appellant. We have also perused the evidence adduced by both the parties and the decision of learned Court below very closely. It is the case of the original plaintiff that towards the repayment of the said amount, the defendant had issued three cheques, however, those cheques were dishonoured when presented by the plaintiff for realization. From the evidence of the plaintiff as he deposed on oath as PW-1, it comes to light that there was a good relation between either of the parties and on this auspicious relation to meet urgent business needs, the defendant-appellant borrowed the alleged amount of Rs.14,00,000/- from the plaintiff-respondent on some conditions. When the appellant-defendant could not make the repayment of the loan

amount within the prescribed period as was stipulated by the plaintiff-respondent, they made a notarized agreement in between them framing some terms and conditions but still, the respondent showed his inability to repay the said loan to the plaintiff. It is evident from the Exbt. 8, 9 and 10, the legal notices issued to the defendant-appellant that the plaintiff-respondent had asked the defendant-appellant through his advocate to repay the said loan amount within the prescribed period from date of receipt of the said notices, in that perspective also there was no repayment from the side of the defendant-appellant. Even, we noticed that when the said cheques were presented before the bankers, the same were dishonoured due to insufficient fund of the respondent. The three return Memos, Exbt. 3, 4 and 6 amply proved the fact of dishonour of cheques of the appellant-defendant showing the remark of 'insufficient fund'. More so, the defendant has admitted in his written statement and he himself issued the aforesaid three cheques to the plaintiff.

13. Now, coming to the aspects as to whether the defendant has a substantial defence to the plaintiff's case or not. As it revealed from the cross-examination of the DW-1, i.e. the original defendant, he clearly admitted that he received Rs.14,00,000/- as loan from the plaintiff in several instalments in the year 2026 for his business investment. He further without any hesitation divulged that a notarized agreement was executed between himself and the plaintiff with a promise to pay back the entire loan amount within a period of one year. Even, he also unequivocally confessed during cross-examination that he issued the alleged three cheques in favour of the plaintiff. More interestingly, the defendant voluntarily stated in his cross-examination that he paid back the entire amount in cash later on, but he did not maintain any written acknowledgment on good faith due to cordial relationship with the

plaintiff. DW-2, the then employee of the defendant deposed in the same tune of the defendant.

14. In view of the above deposition of the defendant, we cannot disbelieve the affairs of money lending to the defendant by the plaintiff as because as we see from the said three cheques given to the plaintiff, the defendant had signed in all the three cheques and when those were presented before the bankers they refused to encash the amount towards the plaintiff due to insufficient funds. The defendant never raised any plea that the cheques do not bear his signatures. Therefore, this cogent and convincing evidence show that the defendant could not make out his case successfully.

15. In view of the discussions made in the foregoing paragraphs, it is obvious that the defendant has no defence to offer the plaintiff's claim. Therefore, we are in opinion that the instant appeal preferred by the appellant-defendant does not inspire confidence or meet standard of 'preponderance of probability'. Consequently, the existence of legally enforceable liability of appellant is presumed.

16. In the above perspective, we do not find any manifest error of law and procedure or perversity in the impugned judgment. Accordingly, the appeal filed by the appellant being devoid of any merit is dismissed.

Pending application(s), if any, stands disposed.

Send down the LCRs.

S.DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J