



2026:DHC:5415



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

% **Reserved on: 02th July, 2026**

Pronounced on: 07th July, 2026

+ **RFA 410/2022, CM APPL. 38646/2022, CM APPL. 56285/2024**

1. **PARVINDER KAUR**
W/o Sh. Bhupender Singh,
R/o A-97, Third Floor,
Anarkali Garden, New Delhi.

2. **BHUPENDRA SINGH**
S/o Sh. Hazura Singh
R/o A-97, Third Floor
Anarkali Garden, New Delhi.

.....Appellants
Through: Mr. Gagan Kumar Singhal and
Mr. Suresh Chaudhary, Advs.

versus

SH. MUKESH KUMAR SHARMA
S/o Rathulal
R/o 79/3, Chandupark,
Krishna Nagar, New Delhi.

.....Respondent
Through: Mr. Shivam Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellants against the **Judgment and Decree dated 28.03.2022**, whereby **Leave to Defend Application** filed by the Appellants in Suit for Recovery filed by the Plaintiff, has been dismissed and the Suit of

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the Plaintiff has been Decreed for Rs.6,50,000/- along with Simple Interest @ 18% per annum and costs.

2. The Plaintiff / Respondent Mukesh Kumar Sharma had filed Suit bearing **CS No. 560/2020 under Order XXVII of C.P.C. for Recovery of Rs.6,50,000/- along with *pendente lite* and future interest @ 18% per annum.**

3. ***Brief facts, as narrated in the Plaintiff***, are that the Plaintiff gave the friendly loan by giving Rs.4,00,000/- on 26.02.2018 through Union Bank of India, Chandra Lok Branch, Delhi; Rs.40,000/- and rest Rs.2,10,000/- in cash on 17.01.2019. Accordingly, total amount of Rs.6,50,000/- was given by the Plaintiff to the Defendants / Appellants.

4. Plaintiff claimed that on his request for return of the entire loan amount, Defendants issued Cheque Nos. 164780 and 164779 both dated 13.06.2020, in the sum of Rs. 4,00,000/- and Rs.2,50,000/- respectively, in discharge of loan liability.

5. After due intimation to Defendants, Plaintiff presented the aforesaid two cheques for encashment, but both the cheques were returned unpaid vide Cheque Returning Memo dated 17.06.2020 with the remarks "*Stopped Payment by Drawer*". Plaintiff immediately approached the Defendants who assured that due to COVID 19, entire market was shut and one more month be given for payment of entire loan amount.

6. Plaintiff on assurance of the Appellants, again presented two cheques, but the same got dishonoured vide cheque returning Memo dated 18.07.2020 with the remarks "*Fund Insufficient*".

7. The Plaintiff served a Legal Notice dated 30.07.2020 upon the Defendants, despite which no action was taken by the Defendants to



discharge their loan liability. *The Respondent/ Plaintiff thus, filed a Complaint under Section 138 NI Act against the Defendants.*

8. The Plaintiff also filed the present Suit under Order XXVII of C.P.C. seeking Recovery of Rs.6,50,000/- along with *pendente lite* and future interest at the rate of 18% per annum.

9. Defendants on receiving the summons for appearance and thereafter, summons for Judgement, filed their ***Leave to Defend Application under Order XXXVII Rule 3(5) of CPC read with Section 151 CPC***. It was claimed that the Plaintiff had filed a false Suit by forging and fabricating the documents including the cheques, as is apparent on their face itself. It was claimed that the *Suit had not been filed by an authorised person* and therefore, was not maintainable.

10. Furthermore, Defendant No.2, Sh. Bhupender Singh had no concern with the alleged transaction and he has been falsely implicated in the Suit.

11. Defendants admitted that they had friendly relations with the Plaintiff. However, Defendants denied having taken any friendly loan from the Plaintiff. In fact, it was claimed Defendants had given a friendly loan to the Plaintiff's son and no friendly loan transaction ever took place between the Plaintiff and the Defendants.

12. It was further explained that **on 22.12.2020, Plaintiff and Defendants entered into an Agreement in front of SSP Ghaziabad, U.P.**, wherein Smt. Parvinder Kaur agreed to give Rs.4,00,000/- to the Plaintiff, within 2-3 months. Smt. Parvinder Kaur undertook to pay Rs.50,000/- on the same day. It was also agreed that the Plaintiff would withdraw his *Complaint Case No.1518/2020 (under 138 NI Act)* pending before learned MM, Karkardooma Court, which was fixed for 31.05.2022.



13. It was further agreed that the Plaintiff had two cheques No.005772 and 005773 of the Defendants, which he would return to the Defendants on payment of Rs.70,000/- in cash and remaining balance amount of Rs.2,80,000/-, to the Plaintiff.

14. It was further stated that when Defendants sought return of the cheques, Plaintiff tore it in their presence. ***The dispute was therefore, in respect of Rs.2,80,000/-.***

15. Defendants further stated that the Plaintiff deliberately avoided to return the cheques on one pretext to the other and has finally filed this vexatious Suit against the Defendants, as he had deliberately not returned the cheques, as he still had enmity in his heart. It was thus, contended that the Plaintiff has not approached the Court with clean hands. He had raised disputed questions of facts and thus, was entitled to the unconditional leave to defend the Suit.

16. **Learned District Judge, considered the defence raised in the Leave to Defend Application** in backdrop of the facts as narrated in the Plaint and observed that according to the Plaintiff, a total of Rs.6,50,000/- was taken by the Defendants, in lieu of which two cheques No.164780 and 164779 in the sum of Rs.4,00,000/ and Rs. 2,50,000/- respectively had been given, which admittedly, on presentation, got dishonoured.

17. Learned District Judge noted that a claim of loan was duly supported by the two cheques in the total sum of Rs.6,50,000/-, that were issued by the Defendants. Though Defendants had taken a plea that these were forged and fabricated documents, but the basis, on which the documents were claimed to be forged and fabricated, has not been explained anywhere in the Leave to Defend Application.



18. It was not denied by the Defendants that these two cheques had been signed by Defendant No.1. It was also not the case of the Defendants that the blank cheques had been given by them to the Plaintiff, which had been subsequently filled by him. *Neither the signatures nor the amounts on the two cheques, have been disputed by the Defendants.* **Hence, it was held that there was no triable issue in regard to issuance of two cheques which had been raised.**

19. Defendants have further relied upon the Agreement dated 22.12.2020 arrived at between the parties before SSP Ghaziabad, U.P. As per the said Agreement, Defendants had paid Rs.50,000/- in cash to the Plaintiff on the same day, as has been endorsed on the Agreement itself. The Defendants further issued cheque bearing No.005772 and 005773 in the sum of Rs.4,00,000/- and Rs.2,50,000/- respectively. The Plaintiff was to withdraw his Complaint No.1518/2020 under 138 NI Act pending with learned MM, Karkardooma Court.

20. The learned District Court noted that in the Agreement dated 22.12.2020 relied upon by the Defendants themselves, there was no denial of any friendly loan not being taken from the Plaintiff and they also did not deny their liability to pay the amount to the Plaintiff. *Therefore, impliedly they have admitted their liability.*

21. When the Plaintiff presented these two cheques for the first time, they were dishonoured vide Memo dated 17.06.2020 with the remarks "*Stopped Payment by Drawer*". No explanation has been given by the Appellants for the reason to stop the payment against these two cheques. Plaintiff had again presented these cheques, but they were again dishonoured with the remarks



‘funds insufficient’ on 18.07.2020. This happened in a gap of about one month.

22. It was observed that the earlier instructions to the Bank for stoppage of payment had been withdrawn and the subsequent dishonour was on the grounds of insufficiency of funds. The service of **Legal Notice dated 30.07.2020** has not been questioned in the Leave to Defend Application. Defendants neither opted to give a Reply to this Legal Notice nor to make any payment. Also, no explanation has been given for the same.

23. Moreover, Agreement dated 22.12.2020 had been signed by Defendant No.2 Bhupender Singh as Second Party to the Agreement, along with Defendant No.1. This Agreement also reflected the admission of the loan having been taken by the Appellants. It was thus, held that no triable issue had been raised in the Leave to Defend Application, which was dismissed. ***The Suit of the Plaintiff was accordingly, decreed in the sum of Rs.6,50,000/- along with interest at 6% per annum.***

24. *Aggrieved by this Judgment, Appellants have preferred the present Appeal.*

25. **The grounds of challenge** are that the impugned Judgment is based on conjectures and surmises and the facts of the case have not been properly considered by the learned Trial Court. The Appellants have been put to serious prejudice by not being given an opportunity to prove their defence, by production of the records to establish that Plaintiff/ Respondent had not approached the Court with clean hands; and that various Complaints had been filed by the Plaintiff/ Respondent before various authorities, on false pretext.



26. The substantial triable issues have been raised by the Appellants in the Leave to Defend Application. It is not denied by the Plaintiff that he has already received a sum of Rs.50,000/- in the Office of SSP and a subsequent payment of Rs.70,000/- in cash, for which a Receipt had been executed. The cheques in question had been torn, after compliance of the Settlement between the parties.

27. The question arises, if the cheque had been torn, how could the Complaints be filed by the Plaintiff/ Respondent under Section 138 NI Act? It is evident that the Respondent has played fraud upon the Court and the Appellants.

28. The bare perusal of Summary Suit would show that it is nothing but reiteration of the Complaint filed under Section 138 NI Act against the Defendants, while the Plaintiff has not even bothered to change the word “Complainant” to “Plaintiff”, which itself shows that no care and caution has been taken to institute the Suit. On this ground itself, the Suit of the Plaintiff is liable to be rejected. *Moreover, the Suit has not been verified properly, according to the mandate of Order VI of CPC.*

29. It was further asserted that Complaint under Section 138 NI Act filed by the Plaintiff, itself was not based on genuine and correct facts, which again was sufficient to allow Leave to Defend the Application of the Appellants. Furthermore, Appellant No.2 has nothing to do with the alleged fraud transaction.

30. It is therefore, submitted that the impugned Judgement, dismissing the Leave to Defend Application, may be set aside and an opportunity be given to the Defendants to defend the Suit by filing their Written Statement and leading the evidence.

**Submissions heard and record perused.**

31. The case of the Plaintiff was that Appellants had requested for a friendly loan of Rs.6,50,000/-. He disbursed Rs.4,00,000/- vide bank entry on 26.02.2018 and the amount of Rs.40,000/- and Rs.2,10,000/- was given in cash. It was thus, asserted that a total loan of Rs.6,50,000/- was given to the Defendants.

32. The Defendants in their Leave to Defend Application had denied having taken any loan from the Plaintiff. However, there were two cheques bearing Nos.164780 and 164779 in the sum of Rs.4,00,000/- and Rs.2,50,000/- respectively drawn on Kangra Cooperative Bank Limited, issued by Smt. Parvinder Kaur / Defendant No.1, in favour of the Plaintiff.

33. The Appellant took a plea that these were forged and fabricated documents. However, the learned District Judge rightly noted that aside from claiming that these documents were forged and fabricated, there is no basis explained on which the cheques were claimed to be forged and fabricated. The bare assertion, without specifying the basis for claiming these two cheques to be forged and fabricated, does not create any defence in favour of the Appellants. The defence of the cheques being forged and fabricated was thus, held to be non-arguable.

34. The Plaintiff/ Respondent had further asserted that these two cheques bearing Nos.164780 and 164779 were presented in the Bank, but were dishonoured with the remarks "*Stopped Payment by Drawer*" on 17.06.2020. This is fully corroborated by the Bank Return Memo. The Appellants have not given any explanation, as to why these two cheques were given and for what reason, they had gotten the payment stopped against these two cheques.



35. Plaintiff had further explained that he had thereafter, contacted the Defendants, who told him to present the cheques again with an assurance that they would be honoured. Accordingly, Plaintiff presented these two cheques, but they again got dishonoured with the remarks '*funds insufficient*'. Again, no explanation was given by the Appellants in regard to the dishonour of these two cheques for funds insufficient, when presented for the second time, within a time period of one month.

36. The Plaintiff/ Respondent admittedly had filed a Complaint Case under Section 138 NI Act, in respect of the two cheques that were dishonoured, which is pending trial.

37. The main defence of the Appellants is around the *Settlement dated 22.12.2020*, arrived at between the parties in Police Station Loni. *The said Settlement Agreement has also not been denied by the Plaintiff.* The Defendants had taken a plea that there was material concealment of facts as this Agreement dated 22.12.2020 had not been disclosed by the Plaintiff, in his Plaint. However, as has been explained, the Suit was filed in October, 2020, while this Settlement was arrived at subsequently on 22.12.2020, in the Police Station. It is obvious that it was an event which happened after filing of the Suit and thus, could not have found a mention in the Plaint.

38. Much defence had been built by the Appellants, around this Settlement. However, as has been rightly observed by the learned District Judge, this Settlement in fact, corroborates that the loan of Rs.6,50,000/- had been taken by the Appellants, which as per the Agreement, was to be settled on payment of Rs.4,00,000/-. *This document in fact, amounts to an implied admission on behalf of the Appellants of having taken loan of Rs.6,50,000/-, though they had initially denied having taken any loan amount.*



39. The *second aspect*, which emerges is that the parties had agreed to settle their entire dispute on payment of Rs.4,00,000/-, out of which Rs.50,000/- were paid in cash on the same day, i.e. on 22.10.2020, by making an endorsement on the Agreement itself.

40. In the Agreement, it had been further recorded that the balance sum of Rs.2,50,000/- shall be paid in a period of 2-3 months. It was further agreed that the Complaint Case No.1518/2020 pending under Section 138 NI Act, pending in the court of learned MM, shall be withdrawn by the Plaintiff on payment of the entire amount.

41. Furthermore, it was also agreed that there were two cheques Nos.005772 and 005773, which were in possession of the Plaintiff, which shall also be returned on the return of the entire loan amount, as agreed in the Settlement.

42. Admittedly, another amount of Rs.70,000/- had been paid by the Appellants to the Plaintiff. *In this way, Plaintiff has admitted having received Rs.1,20,000 from the Appellants, as part of the loan amount of Rs.6,50,000/-.*

43. The contention of the Appellant that the loan amount was agreed to be Rs.4,00,000/- in the Settlement Agreement dated 22.12.2020, is not again tenable as this amount was agreed by way of Settlement, provided it was honoured by the parties. Admittedly, this Agreement has not been implemented in so much as, the Complaint Case before the learned MM has not been withdrawn, on account of non-payment of the entire balance amount by the Appellants, within the stipulated time period. Once the Agreement itself has not been complied with, the Appellants cannot take any benefit under the said Agreement.



44. Learned counsel for the Appellants for the first time, have claimed that the two cheques Nos.005772 and 005773 had been manipulated by the Plaintiff. It is not the first two cheques bearing Nos.164780 and 164779, which were again presented and dishonoured for insufficiency of funds. However, these two separate cheques which were in possession of the plaintiff and were mentioned in the Settlement, were manipulated and the amounts were filled in by the Plaintiff, which got dishonoured for the reason “*funds insufficient*”. Thereafter, the Plaintiff has filed two separate Complaints under Section 138 NI Act, in respect of these two cheques in the Court of learned MM in Ghaziabad, U.P. It is claimed that the Plaintiff in fact, has initiated five litigations in respect of one loan transaction of Rs.6,50,000/-; viz four Complaint cases under S.138 NI Act and one Recovery Suit.

45. The Appellants had nowhere stated in their leave to defend Application claimed that the cheques, which were presented the second time, were not the same cheques or that they were two different cheques, as has been sought to be claimed at this stage.

46. Pertinently, neither these facts were ever disclosed by the Plaintiff or the Appellants in their pleadings or in the leave to Defend Application, but have been orally sought to be agitated at the stage of arguments, in the present Appeal. Neither the second set of cheques nor the second Complaint under Section 138 NI Act, which has been allegedly preferred before the Court in Ghaziabad, U.P., has been placed on record, in support of the contentions by the Defendants.

47. The appellants have further explained that the second set of cheques, had been allegedly torn before the Appellants, but the coloured copies of



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which have been used to file the second set of Complaint Case under Section 138 NI Act. It is only the submissions; in the absence of any corresponding documents and there being no such pleading either in the Complaint or in the leave to defend Application, it cannot be considered at this stage. Moreover, the Appellants are at liberty to raise these grounds in the second set of Complaints filed in the Court in Ghaziabad, U.P.

48. Learned District Judge has rightly held that the Leave to Defend Application did not disclose any triable issue. Rather, there was an admission of taking of loan of Rs.6,50,000/- from the two cheques issued by the Defendants, which were dishonoured for the reasons “stopped payment” as well as by the Agreement dated 22.10.2020.

49. *There is no infirmity in the impugned Judgement dated 28.03.2022, except to the extent that in view of the admission of the Plaintiff of having received Rs.1,20,000/-, after the institution of the Suit, from the Appellants. The decreed amount is hereby, modified to Rs.5,30,000/- along with pendente lite and future interest at the rate of 6% per annum.*

50. Accordingly, the Appeal along with pending Applications, is disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 07, 2026/R