

RAJ KUMAR
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.1781 OF 2011 (O&M)
DATE OF DECISION : 11th AUGUST, 2015

Kabal Singh

.... Appellant

Versus

Om Parkas

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Rajeev K. Kapila, Advocate for the appellant.

Mr. Sunil Agnihotri, Advocate for the respondent.

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SURINDER GUPTA, J. (ORAL)

Plaintiff-respondent Om Parkash filed suit for recovery of ₹1,02,000/-, which include ₹75,000/- towards principal amount and ₹27,200/- towards interest, against defendant-appellant-Kabal Singh.

The case of the plaintiff, in brief, is that he advanced a loan of ₹75,000/- to the appellant who issued him two cheques bearing No.132507 of ₹40,000/- and 132508 of ₹35,000/- both dated 15.05.2001 drawn on Hoshiarpur Central Cooperative Bank Limited, Branch Mansoorpur against account No.104. The cheques were presented to the bank but the same were returned vide memo dated 13.10.2001 with the remarks that “No payment made to any other person. It is only counter payment to loanee only”.

In the written statement the defendant denied that he had taken any loan from the plaintiff. Regarding the cheques plea was taken that these have been misused by the plaintiff.

The suit of the plaintiff was dismissed by the trial Court with the observation that the version of the plaintiff is not corroborated by any independent evidence and no notice was issued to the defendant before filing the present suit. Not satisfied the plaintiff filed appeal which was allowed by the Additional District Judge, Hoshiarpur and the suit of the plaintiff was decreed for recovery of ₹1,02,000/- with pendente lite future interest @ 6 % on the principal amount.

Learned counsel for the appellant has argued that the plaintiff-respondent had failed to prove that he had advanced the loan of ₹75,000/- to the appellant against which alleged two cheques were issued. He argues that the defendant had taken a specific plea that these cheques have been misused by the plaintiff. In case the appellant had to issue cheques regarding the loan taken by him, he could issue one cheque of ₹75,000/- and was not required to issue two cheques.

The learned First Appellate Court has dealt with the above submissions while observing that the plaintiff was the holder of the cheques and there is presumption in his favour that the cheques were drawn for consideration.

This fact is not disputed that cheques were issued from the cheque book issued by the Bank in favour of the plaintiff. PW-1 Narinder Singh, Clerk, Hoshiarpur Central Cooperative Bank, Branch Mansoorpur, has proved that the appellant had an account in their bank and cheque book bearing serial No.132501 to 132520 was issued to him. He has also proved that cheques No.132507 and 132508 were presented before the bank and the same were dishonoured vide memo Ex.PB. The appellant has not

produced any evidence as to how these two cheques were misused. Only a vague plea to this effect was taken in the written statement which finds no corroboration from the evidence placed on record. It has rather been admitted by the appellant that he was facing trial in so many cases under Section 420 IPC and had also remained in judicial lockups in those cases. The onus was heavily on the appellant to prove as to how the two cheques bearing his signatures came in possession of the plaintiff. The plaintiff, while appearing as PW-1, has stated that these two cheques were issued to him in lieu of the advancement of ₹75,000/- as loan. In the absence of any evidence to the contrary lead by the appellant, there is no reason to discard the statement of plaintiff. It is nowhere the case of the appellant that he ever reported the matter that his cheques were lost, misplaced or misused either to bank authorities or to the police. It is nowhere the case of the appellant that he had any type of other dealings with the plaintiff under which those cheques were given to him.

In view of my above discussion, I find no factual or legal infirmity in the judgment passed by the First Appellate Court calling for any interference. This appeal has no merit.

Dismissed.

11th August, 2015
'raj'

(SURINDER GUPTA)
JUDGE