

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

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CRM-A-1130-MA-2016(O&M)

Date of decision : 28.11.2016

DAVINDER SINGH

..... Appellant

versus

SATINDER SINGH BHATIA

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. R.K.Gautam, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed by the appellant against the order of the Trial Court dismissing the complaint under Section 138 of Negotiable Instruments Act.

As per the allegations, the respondent required money for clearing the debt taken by him for the marriage of his daughter which the appellant had given to him after withdrawing from the account of his wife in the year 2011. The respondent gave him a cheque which not having been cleared the instant complaint was filed.

The trial Court held that the appellant had not produced any

evidence to the effect that any amount was withdrawn from his wife's account for advance the loan to the respondent. The Court also found that the respondent had denied his signature on the cheque and that cheque was compared by the handwriting Expert and as per report that signature was not of the respondent. The trial Court also found that notice issued to respondent had come back with the notation of 'ND' which as per trial Court could mean 'notice delivered' or also 'not delivered'. Consequently, the trial Court held that the appellant had not been able to prove the case against the respondent and dismissed the complaint.

Learned counsel for the appellant has argued that at the time of arguments, the appellant had placed on record certified copy of the passbook of his wife which duly reflected in the year 2008 that the amount was withdrawn. (At this stage, it may also be noticed that alongwith this appeal the applicant also filed an application bearing No. CRM-18903-2016 to take into evidence Annexures A-1 to A-4. However the application avers that the appellant could not place on record these documents despite diligent efforts. No further explanation is there. I find no ground for allowing the application.) He has also argued that at different times learned counsel for the respondent took different pleas. At one stage, he stated that cheque was issued to the appellant to withdraw

the money from his account. Then he gave suggestion that the appellant had found the signed cheque after his retirement from his office. Consequently, as per learned counsel for the appellant, the wavering stand prove the case of the appellant.

As regards the submission of the passbook at the time of argument the counsel for the appellant has admitted that this passbook was not presented during evidence. In these circumstances, I see no fault with the finding of the trial Court ignoring that. As regards the plea about different pleas taken by respondent, in my opinion, that also would not lead to irresistible conclusion that respondent had issued a cheque in favour of the appellant, in view of the other circumstances found by the Trial court.

In totality of these circumstances, I see no reason to take a different view as that taken by trial Court.

Application stands dismissed.

(AJAY TEWARI)
JUDGE

November 28 , 2016
anuradha

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No