

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

**RSA-5017-2012 (O&M)
Date of decision : 07.10.2016**

Rajinder Kumar Goyal

... Appellant

Versus

Rattan Lal Garg

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Jindal, Advocate
for the appellant.

Mr. Kanwal Goyal, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit for recovery of ₹ 2,28,272/- (i.e. ₹ 2,00,000/- as principal amount and ₹ 28,272/- as interest) has been decreed by both the Courts below.

Mr. Akshay Jindal, learned counsel appearing on behalf of the appellant-defendant submits that according to the averments in the plaint, the respondent-plaintiff had issued a cheque bearing No.406491 dated 04.10.2004 for a sum of ₹ 2,00,000/- to the appellant-defendant, in essence, the appellant-defendant borrowed the aforementioned amount, but since he did not pay the same, respondent-plaintiff filed the suit on 4/5th March 2007. It is a conceded position on record that the defendant had paid a sum of ₹ 50,000 to the plaintiff through the cheque bearing No.222980-0000-240000 dated 12.06.2006, but the respondent-plaintiff did not apportion the same

towards principal, rather adjusted towards interest. It was not a loan transaction nor there was a written agreement, therefore, the amount is liable to be adjusted towards principal. In case the aforementioned amount is not adjusted towards the principal, it would be amounting to the interest on interest which is against the settled law as principles of law laid down by the Hon'ble Supreme Court in "Mhadagonda Ramgonda Patil & Ors V/s Shripal Balwant Rainade & Ors" 1988 AIR SC 1200, while pondering upon "Law of Dandupat" are no longer applicable on such transaction, thus, urges this Court for modification of the judgment and decree to the extent as remaining outstanding could not be more than ₹ 1,50,000/- i.e. principal amount.

Per contra, Mr. Kanwal Goyal, learned counsel appearing on behalf of the respondent-plaintiff submits that at the time of issuance of the notice of motion, this Court had stayed the execution proceedings qua a sum of ₹ 50,000/- out of the decretal amount. During the execution proceedings, rest of the amount has been disbursed, much less, realized. After taking the instructions, from his client, who is present in Court, he submits that he will forego the sum of ₹ 50,000/-. The concurrent findings of fact cannot be interfered until and unless there is a gross illegality.

I have heard the learned counsel for the parties and appraised the paper book.

In my view, the concession given by Mr. Kanwal Goyal, after having taken instructions from his client, is legal and justified. Once the rebate of ₹ 50,000/- has been given, in my view, the grievance of the appellant-defendant stands vindicated. However, variation would be very minimal for that the Court should not re-appreciate the evidence particularly

in a second appeal.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of both the Courts below are modified to the extent that whatever amount has been realized by the respondent-plaintiff in execution would be the final one and there should be no execution of the judgment and decree as per the concession given by the respondent-plaintiff, namely, Rattan Lal Garg, who is present in Court.

This order of mine would deem to treat the execution proceedings as set aside.

With the aforesaid observations, the appeal stands disposed of.

07.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No