

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

**R.S.A.No.1071 of 2017(O&M)  
Date of Order: 13.09.2017**

**Shinder Singh @ Shinder Singh Kelly**

**..Appellant**

**Versus**

**Ramesh Kumar**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Munish Gupta, Advocate,  
for the appellant.

Mr. Ramandeep Singh Pandher, Advocate,  
for the caveator/respondent.

**ANIL KSHETARPAL, J. (Oral)**

Defendant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for recovery on the basis of a negotiable instrument i.e. a cheque dated 14.05.2007. It is asserted that after taking the loan for a period of two days, defendant issued a cheque which has been dishonoured. Thereafter, plaintiff filed a suit on 22.05.2007.

Defendant in the written statement denied that any loan was taken. It was pleaded that this pre-signed cheque has been stolen, thereafter, amount has been filled in and presented.

Both the Courts below after appreciating the evidence available on the file have recorded a concurrent findings of fact that the plaintiff has been successful in establishing his case.

I have heard counsel for the parties at length and with their able assistance gone through the record of the case.

It is not in dispute that the defendant has not appeared in the witness box. It is further not in dispute that a DDR was got registered regarding this cheque book on 25.07.2007, alleging that the cheque book was stolen in August, 2000. The suit was filed on 22.05.2007, obviously, the DDR was an after thought.

Learned counsel for the appellant has stressed upon the fact that plaintiff-respondent had no financial capacity as he was only an employee of the brother of the defendant.

I have considered the submission of learned counsel for the appellant.

No doubt, there was some litigation in the year 2005 between brother of the defendant-appellant and the plaintiff, however, this cheque was issued on 14.05.2007. It is further to be noticed that brother of the defendant-appellant had filed a suit against the defendant-appellant, hence the defendant-appellant was in litigation with his brother.

Still further, it is not in dispute that the plaintiff was a partner in M/s Hargobind Steel Industries.

Cheque is a negotiable instrument, which has the presumption of truth under Section 118 of the Negotiable Instrument Act. Once the defendant has not appeared in the witness box, adverse inference has rightly been drawn by the Courts against the defendant-appellant.

For the reasons recorded hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

September 13, 2017  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No