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

**CRM-A No.887-MA of 2013 (O&M)
Date of Decision: May 22, 2018**

Keemti Lal

......APPLICANT(s).

VERSUS

Dharampal Dua

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Tejinder Pal Singh, Advocate
for the applicant-appellant.

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SURINDER GUPTA, J.

The applicant-appellant filed complaint with allegation that respondent had issued cheque No.123869 dated 02.10.2009 for ₹7,35,000/- drawn at Union Bank of India, Model Town, Karnal in his favour which when presented to bank for payment was returned vide memo dated 03.11.2009 with remarks "*No Account*". Respondent had been taking financial help from the complainant from time to time and cheque in question was issued towards liability of respondent as per decision of the Arbitrator.

Learned trial Court dismissed the complaint with the observation that cheque in question was not issued for any outstanding liability of ₹7,35,000/- as complainant had admitted that he had advanced only a sum of ₹1,55,000/- to the respondent in lieu of his 1/4th share in flat of Delhi, market price of which at that time was assessed as ₹6,20,000/-.

Later on dispute arose between the parties regarding this flat in which Yogesh Gupta was appointed as Arbitrator, who found respondent liable to pay ₹7,35,000/-. Two versions regarding the existing liability of respondent have come on record, which were examined by learned trial Court in para 18 and 19 as follows:-

> "18. Regarding the first theory propounded by the complainant, the court is of the view that the complainant never lent Rs.7 lacs or more to the accused as he has categorically admitted in his cross-examination that he had only lent Rs.1,55,000/- to the accused. The law has been settled to the effect that the admission is the best piece of evidence and accordingly the accused was not required to lead independent evidence to rebut the presumption under Section 118(a) of the Negotiable Instruments Act as the complainant has himself admitted that he had only lent Rs.1,55,000/- to the accused.
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> 19. Now, let us examine the Second theory propounded by the complainant. There is no dispute regarding the fact that there was some dispute between the parties regarding the flat of Delhi but the version of the complainant had been rendered doubtful by the accused by elucidating sufficient material from the evidence led by the complainant. Regarding the Second theory, the version of the complainant and the witness examined by him is that he had invested Rs.1,55,000/- as his share in the Delhi Flat. A Panchayat was convened on 16.8.2009 wherein both the parties were asked to deposit one blank cheque with Yogesh Gupta and thereafter, the Award was passed to the effect that the accused was liable to pay Rs.7,35,000/- to the complainant. The Award dated 16.8.2009 has been placed on the file as

Mark-C."

Learned trial Court observed that a sum of ₹1,55,000/- was advanced to the respondent without interest. The finding of the Arbitrator that accused had borrowed ₹7 lakhs from respondent with interest @ 2% per month, was found to be incorrect. On appraisal of entire evidence, trial Court held that accused was never under the liability to pay ₹7,35,000/- to the complainant, as such, the cheque in question was not supported by any consideration on the date of issuance of cheque. There was outstanding liability of respondent to pay a sum of ₹7,35,000/- to the petitioner on the date of issuance of cheque. Arbitrator appointed to resolve the dispute between the parties had tried to convert the dispute of share in flat at Delhi into dispute regarding the payment of loan of ₹7 lakh.

On perusal of the judgment of learned trial Court, I find no legal or factual infirmity therein, calling for any interference, as such, this application for grant of leave to appeal has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

May 22, 2018
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***