

**In the High Court of Punjab and Haryana at Chandigarh**

**RSA-4567 of 2018(O&M)  
Date of Decision:22.10.2018**

**Avtar Singh**

**---Appellant**

**vs.**

**Krishan Chand Gupta**

**---Respondent**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**\*\*\***

**Present:** Mr. Deepak Aggarwal, Advocate  
for the appellant

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**Rekha Mittal, J.**

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery of Rs. 6,81,000/- i.e. Rs. 4,65,000/- as principal amount and Rs. 2,16,000/- as interest was partly decreed with interest @ 9% per annum from the date of cheque till the date of decree and future interest @ 6% per annum.

The case set up by the respondent-plaintiff is that the appellant borrowed a sum of Rs. 4 lakhs vide cheque No. 339710 dated 17.3.2011 drawn on State Bank of Patiala Branch Maur from saving bank account No. 65033056928 and agreed to repay the same with interest @ 18% per annum. On 15.2.2012, the appellant in lieu of repayment of aforesaid amount issued cheque No. 671883 dated 15.2.2012 for Rs. 4,65,000/- drawn

on State Bank of Patiala Branch Maur Mandi out of his account No. 65018400737. The cheque got dishonoured for want of 'sufficient funds' vide memo dated 29.2.2012. On 1.3.2012, the respondent served legal notice under the provisions of Negotiable Instruments Act, 1881 (in short "the Act") but the appellant failed to pay the cheque amount. The respondent filed complaint under Section 138 of the Act in which the appellant was convicted vide judgment dated 16.4.2014 passed by the Judicial Magistrate Ist Class, Talwandi Sabo but appeal preferred by the appellant was accepted by the Additional Sessions Judge, Bathinda. The respondent has filed second appeal against the judgment dated 13.1.2015 pending in the High Court at Chandigarh.

The appellant-defendant denied his having borrowed a sum of Rs. 4 lakhs or issuance of cheque by the respondent in his favour. In the complaint case, the respondent admitted that he is earning Rs. 90,000/- per annum, therefore, a person earning Rs. 90,000/- per annum cannot grant loan of Rs. 4 lakhs to another person.

The controversy between the parties led to framing of issues, reproduced in para 4 of judgment of the trial court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, suit was partly decreed in the terms, noticed hereinbefore.

The appeal preferred by unsuccessful defendant-appellant did not find favour with the Additional District Judge, Bathinda.

The sole submission made by counsel for the appellant is that as the respondent-plaintiff has failed to prove cheque No. 671883 dated

15.2.2012 for a sum of Rs. 4,65,000/- drawn on account No. 65018400737

purported to be issued by the appellant for discharge of his liability for repayment of loan amount, in accordance with law, courts have committed a serious error rather perversity by relying upon the said document while accepting plea of the respondent-plaintiff for recovery of decretal amount.

Counsel for the appellant, in response to a query, has not disputed that as per documentary evidence on record, cheque issued by the respondent-plaintiff on 17.3.2011 was got encashed and debited from account of Krishan Chand Gupta. The respondent-plaintiff examined an official from Judicial Record Room, Talwandi Sabo and he produced the original file/records pertaining to complaint No. 37 dated 4.4.2012 titled “Krishan Chand Gupta vs. Avtar Singh” decided by the Judicial Magistrate Ist class, Talwandi Sabo. There is no denial that the original cheque allegedly issued by the appellant is a part of the criminal proceedings initiated by the respondent with regard to dishonour of cheque. Baldev Singh, Record Keeper of State Bank of Patiala Maur Mandi PW2 produced certified copies of both the cheques namely one issued by the respondent in favour of Avtar Singh dated 17.3.2011 and the other issued by Avtar Singh in favour of Krishan Chand Gupta and the documents were marked as Exs. PW2/A to PW2/D, objected to by counsel for the contesting party. Krishan Chand Gupta respondent-plaintiff appeared in the witness box and tendered into evidence his affidavit Ex. PW1/A by way of examination in chief and stated that he had seen the original cheque and documents in the summoned file photocopies thereof are Ex. P1 to P6 which are correct according to originals. Perusal of examination in chief and cross examination of

Krishan Chand Gupta, copies whereof were supplied by counsel during the course of hearing would make it evident that no objection was raised by the contesting party with regard to mode of proof qua documents Exs. P1 to P6. The cheque No. 671883 dated 15.2.2012 for Rs. 4,65,000/- allegedly issued by the appellant in favour of the respondent is Ex. P3. As photocopies of documents Ex. P1 to P6 were tendered into evidence on the basis of originals available in the summoned file and that too without any objection from the contesting party, the appellant can not be heard to say that the cheque dated 15.2.2012 has not been proved in accordance with law or the courts have erred by relying upon the cheque in question proved to be issued by the appellant in favour of the respondent-plaintiff. In this view of the matter, contention raised by counsel is devoid of merit and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

**(Rekha Mittal)**  
**Judge**

**22.10.2018**  
paramjit

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