

RSA-4652-2018 (O&M)

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

**RSA-4652-2018 (O&M)
Date of decision : 10.12.2018**

Suresh Kumar

... Appellant

Versus

Joginder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Rana, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-defendant has not been successful in defending the suit for recovery of ₹6,20,000/- long with interest @ 18% per annum on account of dishonor of cheque bearing No.114702 dated 03.12.2011.

Learned counsel appearing on behalf of the appellant-defendant submitted that a complaint filed in lieu of dishonor of cheque, was dismissed on account of delay. The cheque bearing the next leaves number was filled by brother-in-law, the same was also dishonored. The plaintiff miserably failed to prove the financial capacity. Even a complaint to the police was made, but did not yield any result, therefore, in all probability, the blanks cheques have been misused.

I am afraid the aforementioned argument is not sustainable, for, there is presumption as per the provisions of Section 118 of the Negotiable Instruments Act. For the sake of brevity, Section 118 of the Act reads thus:-

"118 Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;
(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;
(e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
(f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;
(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

Dismissal of complaint without adjudication on merits pales into insignificance, even if, findings are on merits, the same would not be binding upon the Civil Court as the case has to be proved on touchstone of the evidence. The defendant has not been able to explain as to how and under what circumstances, the cheques were in possession of the plaintiff as no such brochure of that period, when the plots were applied in HUDA, has

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been brought on record.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

10.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**