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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 69 of 2018

Devnarayan Prajapati S/o Late Shri Rameshwar Prasad Prajapati Aged About 50 Years By Caste Kumhar, R/o Village Dhartipara , Police Station Bishrampur Tahsil And District Surajpur Chhattisgarh. **(Defendant**)

---- Appellant

Versus

Nanaki Dau S/o Late Shri Balaram Aged About 64 Years By Caste Panika, R/o Village Kunj Nagar Bishrampur, Police Station Bishrampur, Tahsil And District Surajpur Chhattisgarh **Plaintiff**

---- Respondent

For appellant	:	Mr. Sushil Dubey, Advocate
For respondent	:	Ms. Deepali Dubey, Adv. on behalf of Mr. Sarfaraz Khan, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

ORAL JUDGMENT

4-2-2020

1. Appellant has preferred this Civil Appeal against the judgment and decree dated 4-12-2017 passed in Civil Suit No. 2-B/2014 by District Judge, Surajpur, Distt. Surajpur whereby and whereunder he decreed the suit of respondent.

2. This is admitted by appellant that disputed cheque is of him.

3. In brief the respondent's case is that he had good relation with the appellant. In the month of June, 2012 in presence of Balmukund and Asrar Khan, appellant had told him that he requires Rs. 66,000/- for purchasing land and repayment of loan of other persons, and such amount is not in his account, hence requested to give him Rs. 66,000/-, in lieu thereof he will give him a signed cheque, as there is no sufficient money at that time in his account and after 2 – 4 days money would come in his account then said cheque may be encashed. On such demand of appellant he had given Rs. 66,000/- to him in presence of Balmukund and Asrar Khan on 12-6-2012. In lieu thereof, he had given cheque No. 103505 of IDBI bank branch Ambikapur dtd. 12-6-2012 written and signed by him and told that he may withdraw the cash through said cheque after 2- 4 days. Thereafter, at different times appellant told him that amount has not come in his account

thus, he did not submit the said cheque to the bank. Ultimately the limitation for encashment of the cheque expired. Thereafter he did not pay the loan amount on some pretext or other.

4. In brief the appellants' case is that neither he demanded Rs. 66,000/- nor received said amount from respondent. The said cheque is forged, probably it appears that respondent obtained said cheque without his knowledge during working with him. Said cheque is neither written by him nor signed by him.

5. Trial Court by impugned judgment and decree dated 4-12-2017 decreed the suit of respondent. Being aggrieved the appellant preferred this appeal.

6. In brief, the appellant's case regarding appeal is that the impugned judgment and decree are illegal and contrary to law. Trial Court has not appreciated the evidence in proper perspective.

7. **<u>Point for determination</u>** :-

There are following points for determination in the case in hand-

(1) Whether appellant had taken the loan of Rs. 66,000/- on 12-6-2012 from respondent and in lieu thereof gave a cheque No. 103505 of IDBI bank branch Ambikapur to the respondent ?

(2) Whether respondent is entitled to get Rs. 66,000/- from appellant ?

(3) Relief and costs.

<u>Point for determination No. 1- Finding with reasons</u>:-

8. P.W. 1 Nanki Dau says in para 2 and 3 of his statement given on oath that, in the month of June, 2012 appellant had demanded Rs. 66,000/- from him in presence of Balmukund Soni and Asrar Khan saying that same is required for purchasing land and to repay the loan amount of others. On 12-6-2012 he gave the said amount to appellant in presence of Balmukund Soni and Asrar Khan, he gave him a cheque of Rs. 66,000/- of IDBI Bank branch Ambikapur saying that now sufficient amount is not in his account, 2 – 4 days after sufficient amount would come in his account then the cheque may be encashed.

9. P.W. 2 Balmukund Soni says in para 2 of his statement given on oath that in the month of June, 2012 appellant had demanded Rs. 66,000/- from respondent on account of purchasing land and some other necessity in his

presence. Next day respondent gave appellant Rs. 66,000/- in presence of him and Asrar Khan, appellant had given a cheque of Rs. 66,000/- of IDBI bank branch Ambikapur written and signed by appellant himself, saying that 2- 4 days after cheque may be encashed.

10. D.W. 1 Devnarayan Prajapati says in para 3, 4 and 5 of his statement given on oath that on account of accident of Marshal vehicle of respondent he had taken from him Rs. 25,000/- for treatment. Fraudulently appellant received cheque book from him and filled the cheque. Respondent and Balmukund Soni had received from him Rs. 50,000/- saying that they will return double, to avoid these liabilities respondent had filed the civil suit.

11. D.W. 2 Biharilal says in para 2 and 3 of his statement given on oath that from a Bolero vehicle of respondent accident took place with his son, as per the compromise respondent had taken Rs. 25,000/- from appellant and gave him.

12. D.W. 3 Amit Kumar Gupta says in para 2 of his statement given on oath that in his presence respondent obtained Rs. 50,000/- from appellant inducing to invest in his company, thereafter appellant told him that neither respondent invested his amount nor returned back.

13. There are no averments in WS of appellant that allegedly respondent had taken from him Rs. 25,000/- because his vehicle had met with an accident and treatment of injured was required, he and P.W. 2 Balmukund Soni had received from him Rs. 50,000/- saying that they will return double, to avoid these liabilities respondent had filed the civil suit.

14. At the time of cross examination of P.W. 1 Nanki Dau and P.W. 2 Balmukund Soni, counsel for appellant had given them suggestion in para 14 and para 9 respectively that at the time of the scheme they had obtained a cheque for sum Rs. 6,000/- from appellant.

15. Moreover DW 2 Biharilal says in para 6 during his cross examination that appellant had given only Rs. 3,000/- in respect of accident.

16. Appellant did not lodge any police report in any police station, did not give the notice to respondent, did not file any civil suit alleging that respondent had received the cheque fraudulently during working with him, the cheque is forged. For not doing so there is no plausible explanation from him.

17. As per the provision of Section 73 of Indian Evidence Act, 1872 (in

short ' Act of 1872') by the comparison of alleged signature in cheque Ex. P-1 to the signature of appellant on the WS, prima facie this Court finds that the maker of both signatures is one. In other words from comparison under Section 73 of the Act of 1872, this Court prima facie finds that Ex. P-1 is signed by the appellant. Moreover, in Ex P-1 prima facie there is no manipulation in writing of amount in words.

18. Looking to the above mentioned facts and circumstances of the case, this Court believes aforesaid statements in para 2 and 3 of P.W. 1 Nanki Dau, para 2 of P.W. 2 Balmukund Soni, Ex. P-1 and disbelieves aforesaid statement of para 3, 4 and 5 of D.W. 1 Devnarayan Prajapati, para 2 and 3 of D.W. 2 Biharilal, para 3 of D.W. 3 Amit Kumar Gupta in the reference that appellant had filed the civil suit to avoid the said liability of Rs. 25,000/- and Rs. 50,000/- and he has never taken loan Rs. 66,000/- from him.

19. After appreciation of the evidence discussed herebefore, this Court finds that appellant had taken the loan of Rs. 66,000/- on 12-6-2012 from respondent and in lieu thereof gave a cheque No. 103505 of IDBI bank branch Ambikapur to the respondent. Thus, this Court decides point for determination (1) accordingly.

Point for determination No. 2- Finding with reasons:-

20. This has been earlier decided that appellant had taken loan of Rs. 66,000/- from respondent. Thus, this Court finds that respondent is entitled to get Rs. 66,000/- from appellant. Thus, this Court decides point No. 2 accordingly.

Point for determination No. 3- Finding with reasons:-

21. This has been earlier decided that respondent is entitled to get Rs. 66,000/- from the appellant.

22. After complete and full appreciation of the evidence discussed hereinbefore, this Court finds that there is no substance in appeal. It deserves to be and is hereby dismissed. The impugned judgment and decree passed by the trial Court are affirmed.

23. The decree be drawn accordingly.

Sd/-

(Sharad Kumar Gupta)
Judge

Pathak