

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

**RSA No. 58 of 2018 (O&M)
Date of Decision: 17.01.2020**

Darshan Singh and anotherAppellants

Versus

M/s Hari Chand Jagdish Chand ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Brijender Kaushik, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM-486-C-2020

For the reasons stated in the application, the appeal is restored to its original number.

With the consent of the learned counsel for the appellants, appeal is taken on board for final disposal.

RSA No. 58 of 2018

The defendant-appellants are in regular second appeal against concurrent finding of fact arrived at by the Courts below decreeing the suit for recovery of Rs. 90,100/- along with interest @ 9% per annum. The plaintiff-respondent had filed a suit for recovery of Rs. 1,22,700/- along with interest claiming that the aforesaid amount was borrowed by the defendants. Defendants contested the suit pleading that the amount in question was never borrowed. They also filed counter claim, claiming recovery of Rs. 27,067/-.

On appreciation of evidence, both the Courts have found that the amount of Rs. 77,500/- has been paid to defendant No. 1 through cheque

dated 01.11.2006. The Court also found that entry with regard to amount of Rs. 10,600/- dated 20.11.2006 and Rs. 2,000/- dated 02.12.2006 is acknowledged by the defendants by putting their thumb impressions/signatures. Defendant No. 1 admits withdrawal of the cheque amount.

Keeping in view the aforesaid facts, the Courts below passed judgment and decree. Learned counsel appearing for the appellant has submitted that against entry of Rs. 77,500/- the amount representing cheque amount, the reason for which the amount was borrowed has not been specified. Even it is not mentioned that the aforesaid amount has been taken as loan.

This Court has considered submission, however, finds no substance therein. Receipt of cheque of Rs. 77,500/- and encashment thereof is admitted by defendant No. 1. Thus, the amount of Rs. 77,500/- stands transferred to the account of defendant No. 1. In these circumstances, it is the defendant No. 1 who has to explain as to why this payment of Rs. 77,500/- was made. Still further in the account books, defendant No. 1 has acknowledged the receipt of the aforesaid cheque.

In view thereof, there is no ground to interfere.

Appeal dismissed.

(ANIL KSHETARPAL)
JUDGE

17.01.2020
Maninder

Whether speaking/reasoned : Yes
Whether reportable : No