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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th March, 2020

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RSA 126/2019

AJAY SHARMA & ORS.

..... Appellants

Through: Mr. Sunil Kumar, Advocate
(M:9811028518)

versus

KULWANT SINGH

..... Respondent

Through: Mr. Nishit Kush, Mr. Chandan
Rawar, Ms. Mercy Hussain,
Advocates. (M:9873082898)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The present appeal challenges the impugned judgement and decree dated 27th February, 2019 by which the initial judgment dated 6th December, 2018 was reversed by the Appellate Court.

2. A suit for recovery for a sum of Rs.2,41,401/- was filed by the Respondent herein/Plaintiff - Shri Kulwant Singh (*hereinafter 'Plaintiff'*) against the Appellants herein/Defendants - M/s Shree Bhaiyaa Dass Chits (P) Ltd. (*hereinafter 'Chit Fund'*) and its directors namely Shri Shyam Jain and Shri Ajay Sharma (*hereinafter collectively 'Defendants'*). The case of the Plaintiff was that the Plaintiff became a member of the Chit Fund for a sum of Rs.2.50 lakhs, which was to be finally completed in 20 instalments. The Plaintiff admitted till 18 instalments and had given a cheque for the remaining two instalments. However, at the end, when the amount of the Chit was to be discharged, the Plaintiff was paid back a sum of Rs.2,12,688/- by the defendant by means of a cheque which was

dishonoured. The Defendant had, in effect, deducted the amount of the last two instalments which were due from the plaintiff and had paid the remaining amount. The cheque having not been encashed, the Plaintiff filed the suit for recovery.

3. The case of the Defendants is that the cheque was given only as a security and actually the sum of Rs.2,12,688/- was paid by cash and the copy of the receipt in respect of the cash payment is relied upon by the Defendants.

4. The Trial Court, initially, had dismissed the suit vide the order dated 6th December, 2018. The Court had come to the conclusion that the payment was made by cash, which was collected by the Manager of the Plaintiff.

5. In appeal, vide order dated 27th February, 2019 the Appellate court reversed the judgement and the suit was decreed with the following observations:

“12. Perusal of mark - A i.e. voucher receipt reveals the same to be merely the photocopy with receiver's signature appended upon them. The voucher belongs to chit fund company of the defendants only which is neither signed by any witness nor any signatures are appended against the column "Approved By". No explanation was furnished on record for non production of the original voucher on record nor the secondary evidence was led to prove the existence of the receipt voucher, besides the fact that the said receipt voucher allegedly bearing signatures of PW1 was not even put to him in cross examination. In these circumstances, no reliance at all can be placed upon the photocopy of the receipt voucher mark- A.

13. Ld. Trial court noted that the payment was made as per defendants on 30.3.2018 in cash to the plaintiff but the plaintiff had brought his bank statement only upto

31.3.2016, thereby he had not been able to refute the defence of defendants that cash was not received in place of the dishonoured cheque. The said observation of Ld. Trial court seems to be misplaced. The said photocopy of voucher receipt is dated 30.3.2016 and the plaintiff had brought his bank statement upto 31.3.2016 to show the dishonour of the cheque issued by the defendants. Even if the amount in cash had been received by plaintiff, it was for him to deposit the said amount in the bank account or not, therefore, bank statement after 31.3.2016 is the inconsequential fact to be considered. Plaintiff/appellant having been able to prove the issuance of cheque by the defendants in discharge of their liability, the onus therefore shifted upon the defendants to prove their defence with regard to payment made by them in cash against the said cheque, in which the defendants have miserably failed.

14. Plaintiff/appellant having been able to prove his case and the defendants having failed to prove the existence of voucher receipt or the return of payment in cash to the plaintiff against the dishonour of the cheque, plaintiff/appellant is held entitled for recovery of the amount of cheque. The judgment dated 6.12.2018 passed by Ld. Trial court accordingly stands set aside. Suit is decreed in favour of plaintiff/appellant alongwith cost in sum of Rs. 2,12,688/- alongwith interest @ 9 % p.a. w.e.f. the date of filing of the plaint till realization. Decree sheet be prepared accordingly. TCR alongwith copy of this order be sent back to the trial court. Appeal file be consigned to record room."

6. Ld. counsel for the Appellants/Defendants submits that a copy of the cash receipt has been placed on record and no suggestion was put to the Chit Fund's director that the said cash receipt was forged and fabricated. It was also not put to the director of the Chit Fund that the cash receipt was not signed by the Plaintiff.

7. A perusal of the two judgments as also the cash receipt and the cross-examination clearly shows that the director of the Chit Fund has admitted that the chits which were floated by the Chit Fund were duly accounted for in the tax returns. Further, he also states that all the payments towards the discharge of the chits were made by cheque. However, in the present case, there is no clarity as to why it was claimed that the cheque for Rs.2,12,688/- was for security and secondly as to why cash payment was made allegedly to the Plaintiff's manager.

8. Even taking the Defendants' case at its highest i.e. the payment was made by cash and receipt dated 30th March, 2016 has either been misplaced or lost, the Defendants ought to have made genuine efforts to lead secondary evidence to prove the said receipt. The Defendants did neither i.e. neither was the receipt sought to be proved nor was there was any genuine explanation as to why the payment was made by cash.

9. The extract of the DW-1's evidence – Shri Ajay Sharma is set out herein below:

“XXXXXX By Sh. Chandan Rawat, Ld. Counsel for plaintiff.

I was the Director of Banshidhar Chits (P) Ltd. from 2010 to 2016. It is correct that the Regd. Office is 371/Sector 10A, Gurgaon and the Administrative Office is at my residence 631/8, Krishna Gali No. 13, Adarsh Mohalla, Maujpur, Delhi-110053. It is correct that transactions with local members was held at my residence at Maujpur, Delhi. It is correct that the transaction with plaintiff also held at my residence at Maujpur. There is no confirmed number of groups of Chit Funds per month. I maintain the complete account of the transactions. I also file income-tax with respect to the Chit Funds. I have not filed the tax assessment of

the year 2015-16 alongwith the suit. It is correct that the plaintiff was a member of the Chit Fund for the period May 2014 to December 2015. It is correct that whenever the Chit payment and prize money made to any member, it was made by way of cheque or otherwise a receipt is also taken from the member against his signature. It is correct that I am the authorized signatory of the company transactions. It is correct that I maintained the company account as well, the account of the separate members of Chit Fund, in a common register. It is correct that I have not filed the complete ledger account as well as the plaintiff's chit account.

Q. I put to you that because you have not made the payment to the plaintiff that is why you have not filed statement of account of the company and the plaintiff which suggests that defendant company has made the payment?

Ans. It is incorrect.

I know Mahesh Joshi being my neighbour. Mahesh Joshi introduced Sh. Dharam Singh Tadiyal and Sh, Dharam Singh Tadiyal put a chit in the name of plaintiff with me It is correct that the plaintiff has not bid the chits till his 18th installment. It is correct that the plaintiff had sent the cheques for the remaining two installments in my office at Maujpur.

At this stage, two cheques Ex.PW1/1 (colly.) are shown to the witness and the same is admitted by the witness, as sent by the plaintiff for two last installments. It is correct that I acknowledged at the back of cheque Ex.PW1/4 about the deduction of two last installments i.e. 19th and 20th installments i.e. the two cheque amounts issued by the plaintiff and the said cheque was given as security cheque to Dharam Singh Tadiyal. I have not taken any receipt of the said cheque from Dharam Singh Tadiyal.

It is correct that the addresses mentioned in legal notice Ex.PW1/6 are correct. I had issued a security cheque as a certain amount was due towards Dharam Singh Tadiyal (vol. the cheque was given in presence of Smt. Veena Rawat). I have prepared the receipt in the name of plaintiff. It is correct that the security cheque was issued in favour of plaintiff (vol. the security cheque was prepared in favour of the plaintiff as he was the member of the chit fund). I have not got the signature of any witnesses on the receipt or any other document. The plaintiff had told me that he had lost trust upon me and only if a security cheque is issued in his favour can he put his belief upon me therefore I issued the security cheque. It is correct that there are other members to whom payment has to be made and also to be taken. It is wrong to suggest that plaintiff has never pressurize me to secure his amount. It was Mahesh Joshi and Dharam Singh Tadiyal who pressurized me as I do not know the plaintiff. The plaintiff has never come before me. It is correct that you have issued the cheque Ex.PW1/4 to the plaintiff for a sum of Rs. 2,12,688/- as it was due to the plaintiff being the chit fund amount. It is wrong to suggest that the cheque was deposited by the as per my instructions. (vol. Dharam Singh Tadiyal wanted cash payment before I issued security cheque. I have already made the payment in cash to Dharam Singh Tadiyal in presence of Smt. Veena Rawat.). I have not made receipt of cash paid to Dharam Singh Tadiyal as plaintiff was member of chit fund and not Dharam Singh Tadiyal. All the transactions with respect to installments which were made by cheque on behalf of plaintiff were made by Dharam Singh Tadiyal. I do not know if the transactions regarding the installments from the bank account of plaintiff. It is wrong to suggest that I have to made the payment of chit amount to the plaintiff therefore I issued the cheque to the plaintiff. It is correct that the receipts Ex.PW1/3

(colly.) are issued by defendants after receiving the payment of installments from Dharam Singh Tadiyal on behalf plaintiff and the same were issued in the name of plaintiff. It is Wrong to suggest that I am deposing falsely.”

10. A perusal of the evidence on record shows that clearly there is no justification for making the payment in cash. The explanation for giving a cheque as security is clearly an eye-wash. The appellate court has rightly concluded that once the cheque is proved on record and the same has been dishonoured, the burden shifts upon the defendant to establish the so-called receipt to prove that the amount was given by cash. The receipt is clearly not proved as it is not in original and not even a feeble attempt has been made to lead secondary evidence. The receipt has no witness and even an office copy is not produced. All facts point towards the Plaintiff being entitled to the money due from the Defendant which was paid by cheque and the same was dishonoured.

11. Moreover, this Court is not to re-appreciate evidence in a second appeal. No substantial question of law arises in this matter. The only defence being the cash receipt, which has not been proved in accordance with law, no ground is made out for interfering with the impugned order. The decretal amount is already stated to have been deposited in the Trial Court. The same be released in favour of the Plaintiff.

12. The present appeal is, accordingly, dismissed alongwith all pending applications. *Dasti.*

PRATHIBA M. SINGH
JUDGE

MARCH 11, 2020/dk/A.S.