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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.871 OF 2019
WITH
CIVIL APPLICATION NO.1381 OF 2017**

Bhadresh Ramanand Bhatt ... Appellant

V/s.

Floran Finance Limited ... Respondent

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Mr. Atul S. Singh for the appellant.

Mr. Manas Kotab i/by M/s. Desai & Diwanji for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 7, 2023

RC.:

1. The appeal is by the original defendant against whom the respondent had filed suit for recovery of money based on contract and dishonoured cheque. The learned Trial Court by the impugned judgment and decree directed the appellant/defendant to pay an amount of Rs.4,22,882/- (Rupees Four Lakh Twenty-Two Thousand Eight Hundred Eighty-Two Only) with interest at the rate of 12% per annum on principal sum of Rs.4 lakh from the date of filing of the suit till its realization.

2. The respondent/plaintiff, a limited company carrying on business in real estate entered into partnership with the defendant. While executing deed of retirement from partnership deed dated

11th April 1994, one of the condition was to pay an amount of Rs.4,95,000/- (Rupees Four Lakh Ninety-Five Thousand Only) towards contribution of 99% of the capital of the partnership. Accordingly, a deed of dissolution of partnership was executed on 16th November 1995 came to be executed dissolving the partnership with effect from 1st November 1995. As a capital contributed by the plaintiff in partnership, the defendant agreed to pay an amount of Rs.4,95,000/- (Rupees Four Lakh Ninety-Five Thousand Only) by issuing cheque of Rs.4 lakh dated 30th December 1995 towards part payment of the said contribution. On 23rd May 1996, the plaintiff deposited the said cheque which was dishonoured. The plaintiff, therefore, filed the suit for recovery of the amount of Rs.4 lakh.

3. The appellant contested the suit by filing written statement. According to the defendant, the said cheque was a forged cheque and since the plaintiff committed breach of oral agreement, the plaintiff was not entitled to the said amount.

4. Learned Trial Court framed seven (7) issues and answered the issues in favour of the plaintiff. The learned Trial Court while passing the decree in favour of the plaintiff considered the defense of the appellant that the plaintiff agreed that they shall not deposit the cheque of Rs.4 lakh till they pay the amount of Rs.5 lakh to the defendant. According to the defendant since the plaintiff withheld the amount of Rs.5 lakh, the plaintiff committed breach of oral agreement. The said defense had been considered by the Trial Court in paragraph 7 of the judgment. From the material on record, it appears that the issuance of cheque of Rs.4 lakh is

admitted fact. Once the issuance of the cheque is admitted, it is for the defendant to prove that the said cheque was not issued towards discharge of legally recoverable liability. On perusal of the record, it appears that the defendant has failed to discharge the burden cast on him under section 118-A of the Negotiable Instruments Act, 1881. In absence of evidence to show that the said cheque was not issued for discharge of legally recoverable liability, in my opinion, the Trial Court was justified in passing the decree in favour of the plaintiff.

5. In that view of the matter, the first appeal is dismissed in exercise of powers under Order 41 Rule 11 of the Code of Civil Procedure, 1908.

6. In view of dismissal of the appeal, nothing remains to be adjudicated in the civil application and the same stands disposed of as infructuous.

(AMIT BORKAR, J.)