

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**FRIDAY, THE TWENTY SECOND DAY OF DECEMBER  
TWO THOUSAND AND TWENTY THREE**

**PRESENT**

**THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

**SECOND APPEAL NO: 366 OF 2023**

Appeal under section 100 OF CPC against the Judgment and Decree dated 13-12-2022 in A.S.No. 76 of 2021 on the file of the XXIV Additional Chief Judge, City Civil Court Hyderabad Preferred by the Judgment and Decree dated 28-10-2021 in O.S.no. 1033 of 2016 on the file of the XVII Senior Civil Judge, City Civil Court, Hyderabad

**Between:**

Sahed Mazhar, S/o Mazharul Haq, Aged about 58 years, Occ.Service,  
R/o.H.No.B-19/F/1, Kaladera, Malakpet, Hyderabad, Telangana.

**...APPELLANT/DEFENDANT**

**AND**

A.Raghupathi, S/o Lingaiah, Aged about 68 Years, Occ. Retired Service,  
R/o.H.no.17-1-382/P/53, Press Colony, Champapet, Hyderabad, Telangana.

**...RESPONDENT/PLAINTIFF**

**IA NO: 2 OF 2023**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution and operation of Judgment and Decree in A.S.No. 76 of 2021 dated 13-12-2022 passed by the XXIV Additional Chief Judge, City Civil Court, Hyderabad confirming the Judgment and Decree in O.S.no. 1033 of 2016 dated 28-10-2021 passed by the XVII Senior Civil Judge, City Civil Court, Hyderabad pending disposal of Second Appeal

**IA NO: 3 OF 2023**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings including execution of decree dated 28-10-2021 in O.S.No. 1033 of 2016 on the file of the XVII Additional Senior Civil Judge, City Civil Court Hyderabad by suspending the issue of salary attachment warrant against the petitioner / JDR by suspending the order dated 18-8-2023 in E.P.No. 90 of 2023 in O.S.No. 1033 of 2016 passed by the XVII Additional Senior Civil Judge, City Civil Court Hyderabad pending disposal of Second Appeal

**Counsel for the Appellant: M/s. B MADHAVI**

**Counsel for the Respondent: -**

**The Court made the following: ORDER**

**HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

**SECOND APPEAL No.366 of 2023**

**JUDGMENT:**

This Second Appeal is filed challenging the judgment and decree dated 13.12.2022 passed in A.S.No.76 of 2021 on the file of the XXIV Additional Chief Judge, City Civil Courts, Hyderabad, confirming the judgment and decree dated 28.10.2021 passed in O.S.No.1033 of 2016 on the file of the XVII Additional Senior Civil Judge, City Civil Courts, Hyderanad. Thus, the present Second Appeal is filed against the concurrent findings of trial Court as well as first Appellate Court.

2. For the sake of convenience, the parties are referred to as they are arrayed before the trial Court.

3. Brief facts leading to file the present Second Appeal are that the plaintiff and defendant are colleagues in Government Central Press, Chanchalguda, Hyderabad. The defendant approached the plaintiff in the month of May 2011 with a request to lend a sum of Rs.3,00,000/- and the plaintiff, out of the amount accumulated from his retirement benefits, given the said amount as loan on 06.05.2011 and the defendant had executed a demand promissory note with a promise to repay the

loan amount within one year together with interest 24% per annum. The defendant had issued post dated cheque bearing No.540640 drawn on State Bank of India, old Malakpet Branch, Hyderabad for Rs.3,00,000/-, dated 08.05.2012 towards discharge of his debt. It is submitted that the plaintiff demanded loan amount after stipulated time, but the defendant without paying the said amount, intentionally instructed the plaintiff to encash the amount through the post dated cheque issued by him. When the plaintiff presented the said cheque for encashment, it was dishonoured. Therefore, the plaintiff was constrained to file C.C.No.250 of 2013, which is pending on the file of the VII Special Magistrate, Hyderabad, for the offence under Section 138 of Negotiable Instruments Act.

4. It is further contended that due to adamant attitude of the defendant, the plaintiff had issued a demand legal notice on 19.02.2014, calling the defendant to repay the amount together with interest and on receipt of the same on 28.02.2014, the defendant issued reply notice through his counsel by denying the claim of the plaintiff with false and frivolous contentions. Therefore, the plaintiff had filed O.S.No.1033 of 2016 to recover a sum of Rs.5,00,000/- with future interest at the rate of 2% per month from the date of filing the suit till the realization.

5. The defendant filed written statement denying the plaint averments and *inter alia* stating that he has given the blank cheque bearing No.540640 dated 08.05.2012 to the plaintiff for the purpose of security, but the plaintiff has presented the same for encashment. It is alleged that the plaintiff was not having financial capacity to advance the loan amount of Rs.3,00,000/- and due to humanity, defendant paid an amount of Rs.2,00,000/- on 16.07.2011 as part satisfaction of the reimbursement of the hand loan amount and the plaintiff also issued separate receipt duly signed by him for receiving of the suit amount and therefore, the defendant had also paid Rs.1,50,000/-, for which the plaintiff issued a separate receipt. Totally, the plaintiff received Rs.3,50,000/-, which includes interest of Rs.50,000/- out of reimbursement for hand loan of Rs.3,00,000/-, however, the plaintiff did not return the cheque. In C.C.No.250 of 2013, learned Magistrate found that defendant has already discharged the debt amount due under the promissory note and despite its discharge, the plaintiff on the basis of blank cheque had filed the Criminal Case and further, the Magistrate has also come to a conclusion that the plaintiff is not entitled for any claim.

6. Before the Trial Court, on behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A6 were marked. On behalf of the defendants, D.W.1 was examined and Exs.B1 to B4 were marked.

7. The trial Court, after considering the entire material available on record, vide its judgment and decree dated 28.10.2021, decreed the suit with costs in favour of the plaintiff directing the defendant to pay sum of Rs.5,00,000/- with future interest at the rate of 12% per annum from the date of suit till the date of decree and thereafter 6% per annum from the date of decree till the date of realization. Aggrieved by the same, the defendant filed A.S.No.76 of 2021. The first appellate Court on re-appreciation of the entire evidence and perusal of the material available on record *vide* judgment and decree dated 13.10.2022 dismissed the appeal, confirming the judgment and decree passed by the trial Court. Hence, the present second appeal.

8. Perused the record.

9. A perusal of the record discloses that both the Courts below concurrently held that the plaintiff proved that he lent Rs.3,00,000/- to the defendant under Ex.A1 promissory note

and there is no discharge towards the same and also held that the defendant failed to prove his defence of discharge of debt either by way of oral or documentary evidence.

10. Learned counsel for appellants vehemently argued that the trial Court decreed the suit without proper appreciation of the evidence and the first appellate Court also committed an error in confirming the judgment and decree passed by the trial Court.

11. However, learned counsel for appellant failed to raise any substantial question of law to be decided by this Court in this second appeal. In fact, all the grounds raised in this appeal are factual in nature and do not qualify as the substantial questions of law in terms of Section 100 C.P.C.

12. It is well settled principle by a catena of decisions of the Apex Court that in the Second Appeal filed under Section 100 C.P.C., this Court cannot interfere with the concurrent findings arrived at by the Courts below, which are based on proper appreciation of the oral and documentary evidence on record.

13. Further, in **Gurdev Kaur v. Kaki**<sup>1</sup>, the Apex Court held that the High Court sitting in Second Appeal cannot examine

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<sup>1</sup> (2007) 1 Supreme Court Cases 546

the evidence once again as a third trial Court and the power under Section 100 C.P.C. is very limited and it can be exercised only where a substantial question of law is raised and fell for consideration.

14. Having considered the entire material available on record and the findings recorded by the trial Court as well as the Appellate Court, this Court finds no ground or reason warranting interference with the said concurrent findings, under Section 100 C.P.C. Moreover, the grounds raised by the appellant are factual in nature and no question of law much less a substantial question of law arises for consideration in this Second Appeal.

15. Hence, the Second Appeal fails and the same is accordingly dismissed at the stage of admission. No costs.

Pending miscellaneous applications, if any, shall stand closed.

SD/- I.NAGA LAKSHMI  
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The XXIV Additional Chief Judge, City Civil Court Hyderabad
2. The XVII Senior Civil Judge, City Civil Court, Hyderabad
3. One CC to SRI. B. MADHAVI, Advocate [OPUC]
4. Two CD Copies

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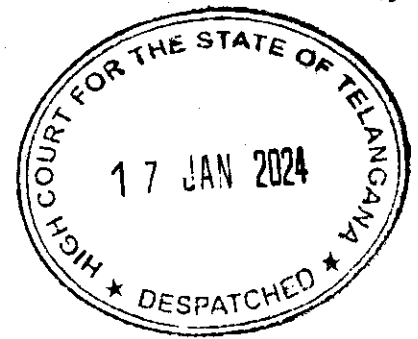
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**HIGH COURT**

**DATED: 22/12/2023**

**JUDGMENT**

**SA.No.366 of 2023**



**DISMISSING SA AT THE  
STAGE OF ADMISSION**

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