

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

RSA-6564-2018 (O&M)

Reserved on: 27.02.2023

Date of pronouncement: 14.03.2023

Jaswant Singh

...Appellant

Versus

Subhash Chand

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Johan Kumar, Advocate for the appellant.

Mr. S.K. Panwar, Advocate for the respondent.

H.S. MADAAN, J.

In nutshell, the facts of the case are that plaintiff Subhash Chand had brought a suit for recovery of Rs.2 lacs against defendant Jaswant Singh on the averments that on account of friendly relations between the parties, the defendant had raised a loan of Rs.2 lacs from the plaintiff on 20.11.2013 and agreed to repay the same with interest @ 1% per month. However, when the plaintiff demanded his money back, the defendant did not do so earlier but when pressurized, he issued a cheque bearing No.679771 dated 20.11.2013 in the sum of Rs.2 lacs drawn on Punjab National Bank, Palwal from his account with said bank. The plaintiff had presented the cheque for encashment, however, the cheque was dishonoured due to insufficient money in the

account of defendant and the plaintiff was informed vide memo dated 12.12.2013. On false assurance given by the defendant, the plaintiff did not file a complaint under Section 138 of the Negotiable Instruments Act. In the meanwhile, period for presentation of the cheque had expired. The plaintiff had asked the defendant to pay the amount but to no effect, as such, he filed the suit in question.

2. On getting notice, the defendant appeared and filed a written statement, contesting the suit, raising various preliminary objections. He admitted having raised a loan of Rs.2 lacs from the plaintiff stating that he had issued a blank cheque in favour of the plaintiff as a security. The plaintiff had assured the defendant that whenever the loan amount was repaid then he would return the cheque to the defendant. Thereafter the defendant had paid Rs.2 lacs to the plaintiff in the presence of witnesses, however, the plaintiff did not return the cheque and made an excuse that the same had been misplaced and he would return the same to the defendant whenever he was able to trace that. However, the plaintiff took undue advantage of the cheque and filed a suit for recovery to extract money from the defendant.

3. No replication was filed.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the defendant had taken a loan of Rs.2,00,000/- from plaintiff on 20.11.2013 on interest as pleaded? OPP.

2. *Whether the plaintiff is entitled to recover an amount of Rs.2,00,000/- from defendant with interest as pleaded? OPP.*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
4. *Whether the plaintiff has no cause of action & locus standi to file the present suit? OPD*
5. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.*
6. *Whether the plaintiff has not come to the court with clean hands and has concealed the true and material facts from this court? OPD.*
7. *Relief.*

5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of evidence of the plaintiff, he himself stepped into the witness box and reiterated his version as given in the plaint besides examining PW2 Mahavir Singh and PW3 Suraj.

6. In rebuttal, the defendant examined DW1 Anil Kumar, DW2 Dhan Singh and defendant himself appeared as DW3.

7. After hearing arguments, the trial Court decided issues No.1 and 2 in favour of the defendant and against the plaintiff; issues No.3 to 6 were decided against the defendant and in favour of the plaintiff. Vide judgment and decree dated 24.12.2015, the suit of the plaintiff was dismissed with costs by trial Court of Addl. Civil Judge (Sr. Divn.) Pawal.

8. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiff had preferred an appeal before District

Judge, Palwal, which was assigned to Addl. District Judge, Palwal, who vide judgment and decree dated 31.07.2018 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for recovery of Rs.2 lacs with interest @ 6% p.a., from the date of filing of suit till recovery.

9. Feeling dissatisfied, the defendant has knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiff, who has put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. A perusal of the judgment passed by the trial Court goes to show that the same is result of misappraisal of evidence and wrong interpretation of law. The trial judge was unable to marshal the facts of the case properly and to apply the law in an appropriate manner in the process he had dismissed the suit of the plaintiff whereas, learned Addl. District Judge, Palwal by going in depth of the pleadings of the parties and minute analysis of the evidence brought on record by them as well as legal position on the subject, found merit in the case of plaintiff that the defendant had raised a loan of Rs.2 lacs from the plaintiff which he had not repaid.

12. It may be mentioned here that in the written statement defendant himself admits having borrowed a sum of Rs.2 lacs from the plaintiff though stating that he had returned the same but then the

defendant had not been able to produce any cogent and convincing evidence with regard to return of the amount of Rs.2 lacs to the plaintiff. Though the defendant has led oral evidence to show that he had returned such amount to the plaintiff but then it has to be seen that no document evidencing return of Rs.2 lacs by the defendant to the plaintiff in the form of some receipt as written document has been placed on record by the defendant. Normally under the circumstances, when a person returns a huge amount of Rs.2 lacs to his lender, then receipt in that regard is obtained but for some strange reasons, the defendant had not been obtained any such receipt which makes his entire case of returning the amount to the plaintiff to be doubtful and improbable.

13. Secondly, the reason to be considered is that if the defendant had returned a sum of Rs.2 lacs to the plaintiff then why did not he ask for return of the cheque said to have been given by him to the plaintiff. If the plaintiff had misused the cheque then under normal circumstances, the defendant should have lodged report against the plaintiff with the police or other wings of the administration but that was not done. Therefore, it comes out that the defendant owned a sum of Rs.2 lacs to the plaintiff which he had not returned to him and the Ist Appellate Court of Addl. District Judge, Palwal was fully justified in passing a decree for recovery of Rs.2 lacs with interest @ 6% p.a., in favour of the plaintiff against the defendant.

14. I do not see any reason to interfere with that judgment

passed by Addl. District Judge, Palwal. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

14.03.2023
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No