



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

RSA-56-2023 (O&M)

Reserved on : 22.07.2024

Date of Decision: 21.08.2024

Parhlad Singh

....Appellant

VERSUS

Sanjay

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Munish Kumar Garg, Advocate for the appellant.

Mr. Shyam Singh Chhokar, Advocate for the respondent.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellant against the judgment and decree dated 13.07.2017 passed by the Trial Court and the judgment and decree dated 08.12.2022 passed by the First Appellate Court decreeing the suit filed by the plaintiff-respondent.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for recovery of ₹4,00,000/- (₹3,00,000/- as principal amount and ₹1,00,000/- as interest) averring that the defendant-appellant had taken a loan of ₹3,00,000/- in cash from him on 16.05.2011 @ interest of 1% per month till 31.03.2012 and in lieu thereof he executed a pronote and receipt in favour of the plaintiff-respondent and signed the same after affixing revenue stamps. However, the defendant-appellant did not repay the loan on 31.03.2012 as promised. The plaintiff-respondent sent a legal notice to the defendant-appellant demanding the repayment of the loan but defendant-appellant refused to repay anything. Hence, the present suit. The

defendant-appellant filed written statement raising preliminary objections and on merits it was admitted that he had taken the loan in question from the plaintiff-respondent. However, according to the defendant-appellant, after the receipt of the legal notice he had repaid the entire loan amount alongwith interest vide cheque No.50648 dated 21.10.2013 for ₹3,65,000 drawn on Axis Bank, Tohana. It was claimed that since the entire loan amount had been repaid, the suit was liable to be dismissed.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree for recovery of ₹4,00,000/- as prayed for on the grounds mentioned in the plaint ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Relief.

4. The Trial Court decreed the suit of the plaintiff-respondent vide judgment and decree dated 13.07.2017. Aggrieved by the same an appeal was preferred by the defendant-appellant which appeal was dismissed vide judgment and decree dated 08.12.2022. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant has contended that both the Courts have erred in decreeing the suit of the plaintiff-respondent. It was argued that the defendant-appellant had repaid the entire loan amount alongwith interest to the plaintiff-respondent vide cheque Ex.D2. Per contra, learned counsel for the plaintiff-respondent has submitted that the cheque

Ex.D2 was never handed over to the plaintiff-respondent and that the defendant-appellant acted mischievously by either encashing those cheques himself or by making some other person stand as 'Sanjay' in the bank. It is further submitted that the signatures of 'Sanjay' as shown in the cheque Ex.D2 are different from the specimen signatures and that it was not the same person who had encashed the cheque.

6. I have heard learned counsel for the parties.

7. Both the Courts below have held the defendant-appellant failed to prove that the cheque Ex.D2 had been encashed by the plaintiff-respondent himself. The Trial Court found that *"Defendant is a 39 years old educated man. Any person being in his position and who would have intended to make payment by cheque to the other person would have, in the considered opinion of this Court, issued an account payee cheque so that he could have concrete evidence of such payment. In the present case, there is no credible and conclusive evidence that it was indeed plaintiff who had encashed the cheque Ex.D2. Possibility still remains that any other person could have stood as Sanjay in the bank and got the cheque Ex.D2 encashed. In such circumstances, it cannot be said that defendant has succeeded in duly discharging his burden of proving that it was plaintiff himself who had encashed the cheque Ex.D2. Consequently, the alleged factum of the loan in question having being totally repaid by the defendant does not stand proved. In appeal, the First Appellate Court held that "Apart from delivery of cheque, the receiving of the payment by the plaintiff/respondent is also not properly established. The plaintiff/respondent has denied any payment and no such payment has come to his account. It is not established that he*

appeared in the bank and got the amount released. DWI Gagan Chaudhary, Assistant Manager has been examined as DWI to prove the payment to the plaintiff/respondent but in his cross-examination, he stated that he cannot say that whether the plaintiff/respondent has taken the payment of cheque. Therefore, the payment of the cheque is not established". Thus, before both the fact finding Courts the defendant-appellant failed to prove that the cheque was indeed encashed by the plaintiff-responder and the signatures behind the cheque were of the plaintiff-responder. Even before this Court learned counsel for the defendant-appellant has been unable to point out any cogent evidence on the record to prove that the loan amount had been received back by the plaintiff-responder. Learned counsel for the defendant-appellant has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No other point was argued.

8. Before parting it may be mentioned here that on 29.05.2024 the following order was passed by this Court in the present appeal :

"Learned counsel for the respondent would contend that in a similar case in which the appellant herein was the defendant, which was almost on identical facts, the regular second appeal filed before this Court by the appellant herein being RSA No.3043-2023 was dismissed vide order dated 08.02.2024 and SLP (C) No.7379 of 2024 challenging the said order was also dismissed by the Hon'ble Supreme Court on 15.04.2024. Faced with the same, learned counsel for the appellant

seeks some time to get his instructions. On his request, adjourned to 22.07.2024.

To be shown in the urgent list.”

Learned counsel for the defendant-appellant has not been able to materially distinguish the facts of RSA-3043-2023 from the facts of the present appeal. Infact, in both the suits the issues were the same and the Trial Court had decreed both the suits of the present plaintiff-respondent on the same day.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.08.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*