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

**112** **RSA-982-2019 (O&M)**
**Date of Decision: 11.01.2024.**

Gurbachan Singh ...Appellant.

Versus

Kirtan Singh ....Respondent.

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**CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

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**Present:** Mr. P.K.S. Phoolka, Advocate
for the appellant.

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**Sukhvinder Kaur, J.**

The instant Regular Second Appeal has been filed against the concurrent findings recorded by both the Courts below.

2. Brief facts of the case as per plaint are that plaintiff filed a suit for recovery alleging that defendant is relative of the plaintiff and was working as Assistant Manager in State Bank of India. Plaintiff was working as an LIC agent. In the year 2009, defendant told the plaintiff that he could arrange a job for his wife as there were vacancies of peons in their bank and demanded Rs.2,00,000/- for this purpose. It was decided that Rs.50,000/- would be given in advance and remaining amount would be paid only after getting of the job by wife of plaintiff. The defendant had assured the plaintiff that the said job would be arranged by 16.05.2011 and if he could not do so then he would return the money. On this assurance given by the

defendant, the plaintiff paid Rs.50,000/- to the defendant on 08.04.2009 in presence of his wife. When the defendant could not arrange the job for wife of plaintiff, then plaintiff demanded back the amount given by him for this purpose. Defendant issued a cheque bearing No.950989 dated 16.05.2011 out of his account with State Bank of India in favour of the plaintiff but when this cheque was presented for encashment, the same was dishonoured with the remarks 'account closed'. Upon this plaintiff, again approached the defendant who assured him that he would soon make the payment to him but in vain. The plaintiff filed a complaint with the police in which compromise was effected between the parties and the defendant had promised to pay the amount by 10.11.2013, but no payment was made by the defendant.

3. The suit of the plaintiff was decreed by the trial Court, vide judgment and decree dated 30.01.2018. The appeal preferred before the First Appellate Court was dismissed, vide judgment dated 07.09.2018 and judgment of the trial Court was upheld. Hence, the present Regular Second Appeal.

4. Learned counsel for the appellant/defendant has contended that both the Courts below have not appreciated the evidence led by the appellant/defendant in right perspective. The respondent/plaintiff neither filed any complaint under Section 138 of Negotiable Instruments Act, 1881 nor any notice on the basis of the above said cheque was issued. So apparently, the present suit has been filed by the respondent/plaintiff by misusing the said cheque, as amount of said cheque was paid in cash by the appellant/defendant to respondent/plaintiff on 10.11.2013. The respondent/

plaintiff did not return the cheque by saying that he had misplaced it. He has submitted that respondent/plaintiff also could not prove that he had paid any money to the appellant/ defendant for getting job for his wife.

5. I have heard learned counsel for the appellant and gone through the records thoroughly.

6. There is concurrent findings of both the Courts below that the plaintiff is entitled to recovery of Rs.50,000/- from the defendant alongwith interest @ 6% per annum from the date of filing of the suit till date of repayment. The case of the plaintiff is that he had given Rs.50,000/- to defendant to get job for his wife, whereas plea of defendant is that he had taken a loan of Rs.40,000/- from the plaintiff in discharge of which liability, the cheque in question (Ex.P-1) was issued to him. It has been proved on record that the said cheque was dishonoured by the bank due to closure of account of the defendant. The defendant had taken the specific plea that he had returned the money to the plaintiff but did not obtain any receipt from him and plaintiff told him that he had misplaced the cheque.

7. In this case, the alleged payment was made by the defendant to the plaintiff, when the cheque issued by the defendant had already been dishonoured and the matter had also gone to the police. In such circumstances, every prudent man would get receipt of the payment made by him. so this oral version of appellant/ defendant does not inspire confidence that he had made the payment to the plaintiff on 10.11.2013 in the presence of his wife. Even the said oral evidence adduced by the defendant is not reliable. In the written statement, it has been pleaded by the defendant that the money was returned in presence of Tota Singh and there

is nothing in the written statement about presence of DW2 Jaswant Singh at that time. If the plaintiff did not opt to file a complaint under Section 138 of Negotiable Instruments Act, 1881, when the said cheque was dishonoured, then it has no adverse bearing on the case of the plaintiff as it was for the plaintiff to chose which proceedings he wanted to initiate against the defendant.

8. For the reasons recorded above, the present Regular Second Appeal must fail as it does not raise any question of law much less substantial question of law.

9. Appeal stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

**(SUKHVINDER KAUR)**
**JUDGE**

**11.01.2024.**
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No