IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

122 **RSA No.3043 of 2023 (O&M)**
Reserved on : 25.01.2024
Date of Decision: 08.02.2024

Parhlad Singh ....Appellant

VERSUS

Dalbir Singh ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Laxman Choudhary, Advocate for
Mr. Raje Ram Kaushik, Advocate for the appellant.

Mr. Shyam Singh Chokkar, 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 21.08.2023 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 Rs.4,00,000/- (Rs.3,00,000/- as principal amount and Rs.1,00,000/- as interest) averring that the defendant-appellant had taken a loan of Rs.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

Yogesh Sharma
2024.02.08 15:36
I attest to the accuracy and
integrity of this order/judgment.
High Court Chandigarh

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 three cheques viz. cheque no.50650 dated 29.10.2013 for Rs.30,000/-, cheque no.50653 dated 12.11.2013 for Rs.40,000/- and cheque no.66028 for Rs.3,50,000/- dated 11.9.2014, all 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 Rs.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 21.08.2023. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant has contended that both the Courts below have erred in decreeing the suit of the plaintiff-

Yogesh Sharma
2024.02.08 15:36
I attest to the accuracy and
integrity of this order/judgment.
High Court Chandigarh

respondent. It was argued that the defendant-appellant had repaid the entire loan amount alongwith interest to the plaintiff-respondent vide three cheques Ex.D1 to Ex.D3. Per contra, learned counsel for the plaintiff-respondent has submitted that the cheques Ex.D1 to Ex.D3 were 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 'Dalbir' in the bank. It is further submitted that the signatures of 'Dalbir' as shown in the cheques Ex.D1 to Ex.D3 are different from each other and that it was not the same person who had encashed the three cheques.

6. I have heard learned counsel for the parties.

7. Both the Courts below have held the defendant-appellant failed to prove that the cheques Ex.D1 to Ex.D3 had been encashed by the plaintiff-respondent himself. The Trial Court found that *"Even more interestingly, it must be noted that none of the cheques Ex.D1 to Ex.D3 are account payee cheques. They are bearer cheques which can be encashed directly over the counter of the bank. It is difficult to accept that if the defendant indeed wanted to make payment to the plaintiff by means of cheques, then why he did not issue account payee cheques in favour of the plaintiff. It certainly gives rise to suspicion that the defendant may have issued the cheques and may have himself got them encashed either by him impersonated Dalbir or making any other person impersonate him. The possibility of said fraud becomes further cryptic when viewed in light of the fact that signatures of the persons encashing the cheques Ex.D1 to Ex.D3 marked as Q1 to Q5 do not tally with each other in any way. Therefore, this*

Yogesh Sharma
2024.02.08 15:36
I attest to the accuracy and
integrity of this order/judgment.
High Court Chandigarh

Court concludes that by way of preponderance of probabilities, defendant has failed to duly prove that the cheques Ex.D1 to Ex.D3 had indeed been encashed by the plaintiff in question". In appeal, the First Appellate Court held that *"Neither the identity of the plaintiff to be holder of the bearer cheque nor his signatures on the same stands proved".* Thus, before both the fact finding Courts the defendant-appellant failed to prove that the three cheques were indeed encashed by the plaintiff-respondent and the signatures behind the three cheques were of the plaintiff-respondent. 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-respondent. 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. 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. The FDR for Rs.1,00,000/- deposited by the defendant-appellant pursuant to order dated 27.09.2023 passed by this Court be returned to him.

(ALKA SARIN)
08.02.2024 **JUDGE**
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

Yogesh Sharma
2024.02.08 15:36
I attest to the accuracy and
integrity of this order/judgment.
High Court Chandigarh