



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

**RSA-1159-2019 (O&M)
Date of decision:08.01.2025**

Gurmeet Singh

... Appellant

Vs.

Karnail Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Sunny K. Singla, Advocate for the appellants.

...

SUKHVINDER KAUR, J.

1. Instant regular second appeal has been filed by defendant No.2 against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was decreed.

2. Brief facts of the case as per plaint are that the plaintiff and defendant No.1 is a partnership concern and defendants No.2 and 3 are its partners. Defendants deal in the business of commission agents in the name and style of M/s Consolidate Farmers and Company, village Kup Kalan, Tehsil Malerkotla, District Sangrur. It was averred that defendants borrowed a sum of Rs.6 lakhs from the plaintiff on 27.02.2009 for one month but did not return the same after one month. On 27.03.2009, they took further time of one month for returning the said amount and in discharge of said legal liability, they issued post dated cheque No.1650009 to be paid on 27.04.2009 for an amount of Rs.6 lakhs drawn on Canara Bank, Malerkotla out of account No.2385 being maintained by them with the said bank in favour of the plaintiff. It is further alleged that the said cheque was signed by defendant No.2 with the consent and in presence of Darshan Singh –



Defendant No.3. Plaintiff presented said cheque for encashment to his banker i.e. State Bank of Patiala, Malerkotla but the same was dishonoured by drawee bank vide memo dated 01.10.2009 as the account was blocked/dormant, out of which the cheque had been issued, which amounted to dishonouring the cheque for want of sufficient funds. Thereafter a legal notice dated 12.10.2009 was issued to the defendants through counsel for making payment of the cheque in question which was duly received by the defendants and they promised to make the said payment but failed to do so. Complaint under Section 138 of the Negotiable Instruments Act was filed by the plaintiff against the defendant in the Court of learned JMIC, Malerkotla. Defendants were requested number of times to return the aforesaid amount but they refused to do so. Hence, the present suit was filed.

3. Notice of the suit was issued to the defendants. Defendants No.2 and 3 filed their respective written statements. Defendant No.2 submitted in his written statement that he was partner of the said firm and partnership was got dissolved with the consent of the parties and he has no concern of any kind with defendant No.1 – firm after its dissolution on 10.03.2006. It was alleged that after dissolution of firm, he was not responsible for the debts of the firm as per para 11 of the dissolution deed dated 10.03.2006. Objections regarding act and conduct, maintainability of the suit, lack of cause of action were also taken and all the material averments were denied.

4. Similar preliminary objections were taken by the defendant No.3 in his written statement. On merits, it was submitted that defendant No.1 – firm was dissolved in the year 2006 and at the time of dissolution,



defendant No.2 had taken all the record, cheque book and other documents of the firm. It was alleged that defendant No.2 might have borrowed the amount in dispute from the plaintiff and issued the cheque of the firm regarding the same and might have misused the cheque in dispute, by concealing the true facts regarding dissolution of firm from the plaintiff. Defendant No.3 did not borrow any amount personally or on behalf of the firm from the plaintiff.

5. Replication to the written statement was filed in which contents of the plaint were reiterated and those of written statement were denied.

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

1. Whether the defendant borrowed an amount of Rs.6,00,000/- from the plaintiff on 27.02.2009 and in discharge of said liability, issued a cheque No.1650009 dated 27.04.2009 in favour of plaintiff? OPP

2. Whether the plaintiff is entitled to recover the suit amount, as prayed for? OPP

3. Whether the plaintiff is entitled to interest if so at what rate? OPP

4. Whether the suit is not maintainable in the present form? OPD

5. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD

6. Whether the plaintiff has no cause of action to file the present suit? OPD

7. Relief.

7. Thereafter both the parties led their respective evidence. In order to prove his case, plaintiff himself stepped into the witness box as PW1 and reiterated verbatim of plaint in his affidavit Ex.PA.



8. To rebut his evidence, defendant No.2 – Gurmeet Singh himself appeared as DW1 and in his affidavit Ex.DA reiterated verbatim of written statement. Defendants also examined DW2 R.V. Vashishta, Handwriting and Finger Print Expert who proved his report Ex.D1 and photo charts as Ex.D2 to Ex.D5. However, no evidence was led by defendant No.3.

9. Vide judgment and decree dated 22.11.2016, suit of the plaintiff was decreed. Aggrieved of the said order, defendant No.2 – Gurmeet Singh filed an appeal before the First Appellate Court which was dismissed vide judgment and decree dated 29.10.2018. Hence, defendant No.2 – Gurmeet Singh/appellant has knocked the doors of this Court by way of filing the present Regular Second Appeal.

10. Learned counsel for the appellant has contended that he is not liable to make payment of loan amount to the plaintiff, as firm was got dissolved with the consent of the parties and after dissolution of the firm on 10.03.2006, he was not a partner of the firm and has no concern with the said firm. He has further contended that both the Courts below have erroneously not taken into consideration report of Handwriting and Finger Print Expert while adjudicating the controversy between the parties. From the report of R.V. Vashishta, Handwriting and Finger Print Expert, it stands proved that cheque in dispute does not bear signatures of defendant No.2/appellant and rather from the evidence on record, it is established that defendant No.2/appellant had not borrowed any amount from the plaintiff. He has argued that both the Courts below have also failed to consider that in the present case cheque was issued on 27.04.2009 whereas the present case was filed on 01.10.2012 and as such the same is barred by limitation. He has



urged that a false story has been concocted by respondent No.2 and appellant has already ceased to be partner of the said firm from the date of dissolution i.e. 10.03.2006. A contradictory stand has been taken by the plaintiff while alleging in the plaint that firm had borrowed the said amount but while making the statement, he has changed his stand. He has submitted that both the Courts below have failed to appreciate the evidence on record in the right perspective, so both the judgments are liable to be set aside.

11. I have heard learned counsel for the appellant at length and have gone through the record.

12. Much stress has been laid by learned counsel for the appellant while raising contention that from report of DW2 R.V. Vashishta, Handwriting and Finger Print Expert, it transpires that the cheque in question does not bear signatures of defendant No.2 and as such, it is forged and fabricated. Defendant No.2/appellant has also denied his signatures on the cheque Ex.P1. It has rightly been observed by learned trial Court that in cross-examination a suggestion was given to DW2 that he had not taken S1 to S6 signatures for comparison as they tallied with the disputed signatures marked as Q1 taken from the cheque. No satisfactory explanation was given by the said witness that why the signatures S1 to S6 which were available on the file, were not taken as standard signatures for comparing with the questioned signatures Q1. It has been specifically observed that in earlier judgment dated 10.02.2014 titled as 'Karnal Singh Vs. M/s Consolidate Farmers and Company', a complaint filed under Section 138 of the Negotiable Instruments Act Ex.P10, there was a specific finding in the said judgment that opinion given by the Handwriting and Finger Print Expert



was not relevant in the present case as he did not examine all the signatures of accused No.2 rather he examined only those signatures which were pointed out by counsel for accused No.2 and it is general trend that the Handwriting and Finger Print Expert gives his report in favour of the person who engaged him. So report of DW2 has rightly not been relied upon by the Courts below.

13. Perusal of statement of PW1, plaintiff reveals that he has categorically admitted in his cross-examination that Gurmeet Singh had taken loan of Rs.6 lakhs and cheque was also issued by him. Defendant No.3 has not taken any loan from him and he had not issued any cheque in favour of the plaintiff and he was having no transaction with defendant No.1. Thus plaintiff himself has denied any liability of defendant No.3 to pay the amount in question. Gurmeet Singh/defendant No.2 while appearing as DW1 has himself admitted in his cross-examination that many persons have filed complaint against him and his firm regarding dishonouring of the cheques issued by him. Civil suits have also been filed against him. He has not specifically denied regarding dishonouring of the cheque by the bank and has also admitted receiving of notice sent by plaintiff vide which amount was demanded from him, but he did not make any payment. He categorically admitted that complaint under Section 138 of the Negotiable Instruments Act was filed against him with regard to cheque No.1650009 dated 27.04.2009 and he was convicted in this case and appeal was also dismissed.

14. It is also the admitted fact that firm was dissolved in the year 2006. Plaintiff Karnail Singh while appearing as PW1 has stated that he



came to know that firm had been dissolved in the year 2006 and the entire record and cheque book was in possession of defendant No.2. DW1 Gurmeet Singh has admitted in his cross-examination that they had obtained cheque book facilities from the bank and present cheque was part of the cheque book which had been issued by the bank to the firm. When plaintiff during his cross-examination has categorically stated that defendant No.3 had not taken any loan from him then it has rightly been observed by the Courts below that the loan was taken by defendant No.2 in his individual capacity and he used the cheque book of the firm for issuing the cheque in discharge of his personal liability. Defendant No.2 - Gurmeet Singh has not denied his writing on Ex.P1 i.e. the cheque in question and it is the specific stand of the plaintiff that cheque was handed over by defendant No.2 to him. In this factual matrix, it has rightly been held by the Courts below that cheque Ex.P1 was issued by Gurmeet Singh/defendant No.2 in discharge of his personal liability and suit of plaintiff has rightly been decreed.

15. No question of law much less substantial question of law arises for determination in the present second appeal. Accordingly, the appeal is without any merits and is hereby dismissed.

16. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

08.01.2025
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |