IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

125 **RSA-2037-2019 (O&M)**
Date of decision: 24.04.2025

Dharampal and another **...Appellant(s)**

Vs.

Jaswinder Singh Saini **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. H.K.Brinda, Advocate for the appellants.

***

NIDHI GUPTA, J.

The defendants are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff/respondent herein, for recovery of Rs. 10 lacs as principal amount on the basis of receipt dated 25.10.2008 executed by the defendant in favour of the plaintiff or as per cheques bearing Nos. 100640 & 100467 of Rs.5 lacs each dated 13.02.2009 issued by defendant as Sole Prop. of Saini Motor Enterprises along with interest, has been decreed by both the Courts below.

2. At the very outset, it is pointed out that the present appeal is of the year 2019. However, notice has not yet been issued in the same as the matter has been adjourned since 2019 at the repeated requests of counsel for the appellant. Even today, a request for adjournment was made, however the same has been declined by this Court.

3. Learned counsel for the appellants submits that the suit of the plaintiff was wrongly decreed by the learned courts below as they have failed to appreciate that the plaintiff was running a business of TVS motors of which the appellant was a Sub Dealer. It is submitted that the cheques (Ex.P-2 and Ex.P-7) were given by the appellants as security to the plaintiff which cheques have been misused by him. It is further submitted that the plaintiff had also failed to prove his financial capacity to extend loan to the defendants. No income tax return was produced by the plaintiff to prove his paying capacity. The judgments and decrees of the Courts below have been passed on the basis of conjectures and surmises and on misreading of documentary and other evidence on file and non-application of mind. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

4. No other argument is raised on behalf of the appellants/defendants.

5. I have heard learned counsel for the appellants/defendants and perused the case file in great detail.

6. I find no merit in the submissions advanced by learned counsel for the appellants/defendants. The record bears out that the plaintiff was running a business in the name and style of M/s. Layalpur TVS Motors; whereas the defendants were doing business in the name and style of Saini Motor and Enterprises/defendant no.2. Defendant No.1 is the sole proprietor of the firm/Defendant no.2. As per Sale Deed dated

17.03.2008 (Ex.P-6), the defendants were put in exclusive possession of the land measuring 11 Marlas. On 25.10.2008, the defendant had borrowed Rs. 10 lacs as loan from the plaintiff on 25.10.2008 for his personal use as he wanted to raise a showroom upon the said land. The defendant had also executed a receipt dated 25.10.2008 (Ex.P-10) in this regard. The defendant had promised to return the said amount to the plaintiff upto 31.01.2009 along with interest @ 18% per annum. The defendants had also issued two cheques of Rs.5 lacs each bearing Nos. 100460 and 100467, both dated 13.02.2009. Besides the cheques, the defendant had also deposited the above said Sale Deed (Ex.P-6) with the plaintiff as security. The plaintiff had requested several times to the defendant to make payment however, the defendant failed to do so. Both the cheques when submitted by the plaintiff were dishonoured and returned with the remarks “Funds insufficient” vide memo dated 25.03.2009. Plaintiff had also issued legal notice under Section 138 of the Negotiable Instruments Act on 06.04.2009 to the defendant, however, to no avail. It was in this background that the plaintiff filed the present suit on 24.10.2011.

7. Learned trial Court vide judgment and decree dated 25.09.2017 had decreed the suit of the plaintiff with costs for recovery of Rs. 10,00,000/- along with interest @ 12% per annum from the date of advancement of loan amount i.e. 25.10.2008 till date of decree. The plaintiff was also granted future interest @ 6% per annum from the date of decree till realization of decretal amount. The said decree was upheld

by the learned lower appellate Court vide judgment and decree dated 21.07.2018 affirming findings of the learned trial Court.

8. It has been submitted by learned counsel for the defendant that the cheques dated 13.2.2009 (Ex.P-2 and Ex.P-7), for an amount of ₹5 lakhs each were handed over to the plaintiff as security, and the said cheques have been misused by the plaintiff. However, a perusal of the record of the case reveals that before the learned Courts below the defendant had pleaded that a Settlement Deed dated 22.02.2008 Ex.D-1 was entered into between the parties whereafter only a sum of Rs.4,37,491/- was outstanding against the defendant; and that the said cheques (Ex.P-2 and Ex.P-7) were given by the defendant as security along with Sale Deed (Ex.P-6). First and foremost, if that was so, why were cheques issued by the defendant for an amount of ₹10 lakhs. Further, this submission of the defendant is contradicted from the averments made by him in his written statement to the effect that he had issued two cheques of Rs.5 lacs each both dated 13.02.2009 bearing Nos. 100460/Ex.P-2 and cheque no.100467/Ex.P-7, and the said cheques bear his signatures. The defendant has also admitted during his cross-examination that the above said cheques are part of the cheque book which was got issued to him by his banker. It has been contended by the defendant that the said cheques were issued as security amount of Rs.4,37,491/-. However, in his cross-examination as DW2 the defendant has stated that cheque bearing No. 100460 (Ex.P-2) was issued only for withdrawal of Rs.50,000/-; and that another cheque bearing No. 100461 was issued against the above said

cheque No. 100460, since the signature of the defendant on cheque No. 100460 was false. Needless to say the said deposition of the defendant in his cross-examination is in contradiction of the averments made by him in the written statement; as also in contradiction of another version given by the defendant that a Settlement/Compromise dated 22.02.2008 (Ex.D-1) had been entered into between the parties and the above said cheques dated 13.02.2009 have been issued by the defendant as security. Further, as per the receipt Ex.P-10 the defendant had admitted handing over original Sale Deed Ex. P6 to the plaintiff as security. The fact that the said Sale Deed dated 17.03.2008 was in the possession of the plaintiff, also shows that loan transaction had taken place between the plaintiff and the defendant.

9. From the above facts, it is clear that the defendant has given different stories at different junctures of time. Moreover, the defendant was also unable to prove the alleged Settlement/Ex.D-1 as the original of the same was not produced on record; and neither was any marginal witness of the Settlement Ex.D-1 examined by the defendant. Even otherwise, Ex.D1 is the photocopy of the alleged Settlement, original of which was never produced. Ex.D1 was not proven even by leading any secondary evidence.

10. It has also not been explained by the defendant that if cheque No. 100461 had been issued in lieu of cheque No. 100460, then why the defendant did not take back cheque No. 100460. It may also be pointed out that the plaintiff had placed on record the plaint of a previous

suit titled as "*Jaswant Singh vs. Dharam Singh*" as Ex.P-13; to which the defendant had filed written statement Ex.P-15. The said previous suit Ex.P-13 was also regarding loan amount taken by the defendant from the plaintiff and present cheques in question (Ex.P-2 and Ex.P-7) were also pleaded by the plaintiff in that suit. However, in the written statement Ex.P-15 filed by the defendant in the previous suit, he has made no mention of the Settlement Ex.D1. Thus, the argument of the defendant that he had given the said cheques Ex.P-2 and Ex.P-7 as security to the plaintiff and the same have been misused by the plaintiff, is not made out from the record.

11. The fact that the loan was extended to the defendant by the plaintiff is also proven from the evidence of attesting witness PW2 Gurpreet Singh, who categorically deposed that said receipt was executed by the defendant at the time of receipt of loan of Rs.10 lacs. It is also to be noted that no complaint or FIR was got registered by the defendant against the plaintiff for alleged forgery of receipt Ex.P-10.

12. The next argument of learned counsel for the appellant is that the plaintiff had failed to show his capacity to extent loan of Rs.10 lacs on 25.10.2008. The said argument is also rendered nugatory from the evidence on record as the plaintiff has duly proved his income tax returns for the years 2010-2011 to 2015-2016 (Ex.P-1 to Ex.P-12) which reflect that the plaintiff has turnover of crores of rupees, and stock and profit in lakhs of rupees. Even if the said income tax returns were not for the relevant period, however the same show the paying capacity of the

plaintiff to be sufficient enough to extend loan of Rs.10 lacs. Learned counsel for the appellant further argued that the plaintiff had failed to prove his income tax returns for the relevant period. However, the said argument is incorrect as defendant in his cross-examination as DW2 has himself stated that the plaintiff was doing large scale business.

13. Learned counsel for the appellants/defendants is unable to dispute or controvert the above said concurrent facts, and findings of the learned Courts below.

14. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed.**

15. Pending applications, if any, stand disposed of.

24.04.2025 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No