



RSA No. 1556 of 2023 (O&M) **1**

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

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**RSA No. 1556 of 2023 (O&M)
DATE OF DECISION :- 12.03.2025**

Vijay Kumar

...Appellant

Versus

Gulshan Kumar Munjal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

1. This is the plaintiff's Regular Second Appeal against the judgment of the First Appellate Court which in turn has reversed the trial Court's judgment. The parties to the suit are brothers. Vijay Kumar is younger whereas Gulshan Kumar Munjal (defendant) is elder. Vijay Kumar filed suit for recovery of Rs.3,45,000/- on the ground that defendant borrowed Rs.2,50,000/- from him on 17.12.2012 which was paid by cheque. Defendant contested the suit on the ground that this payment of Rs.2,50,000/- was in fact partial refund of loan borrowed by Vijay Kumar. The trial Court decreed the suit whereas the First Appellate Court reversed



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the decree. It has come on record that Gulshan Kumar Munjal paid the following amount to Vijay Kumar through various cheques :-

<u>Date</u>	<u>Payment</u>
02.07.2008	Rs15,000/-
03.02.2009	Rs.9,000/-
23.05.2009	Rs.20,000/-
07.07.2009	Rs.42,000/-
17.12.2009	Rs.18,000/-
19.05.2010	Rs.27,000/-
25.09.2010	Rs.20,000/-

2. Apart from that, defendant also paid the following amount to the plaintiff :-

<u>Date</u>	<u>Payment</u>
03.09.2009	Rs.21,000/-
29.07.2010	Rs.25,000/-
25.09.2010	Rs.20,000/-
02.03.2011	Rs.80,000/-
19.09.2012	Rs.24,000/-

3. Thus Gulshan Kumar Munjal had paid Vijay Kumar Rs.3,21,000/-. Hence the First Appellate Court reversed the decree.

4. Heard learned counsel representing the appellant at length and with his able assistance perused the paper book.

5. Learned counsel for the appellant has made the following two submissions :-

- (i) These cheques have not been made part of the pleadings by defendant while filing the written statement. Appellate Court could not travel beyond the case pleaded by the defendant.
- (ii) It has come on record that Vijay Kumar was working in the firm run by Gulshan Kumar Munjal.



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6.

This Court has considered the submissions made by learned counsel for the appellant.
7.

While filing the written statement Gulshan Kumar Munjal has denied borrowing of Rs.2,50,000/-. He has stated that this payment of Rs.2,50,000/- represents the partial refund of amount borrowed by the plaintiff. As per Order 6 Rule 2 of CPC, material facts are required to be incorporated in the pleadings and not the evidence. The details of the payment made by Gulshan Kumar Munjal in favour of Vijay Kumar was not required to be incorporated in the written statement.
8.

Once it is proved that plaintiff Vijay Kumar received Rs.3,21,000/- from his brother Gulshan Kumar Munjal, the onus to explain the payment lay upon the plaintiff, however, he failed to justify the same.
9.

Hence, there is no ground to interfere. Accordingly, the appeal stands disposed of.
10.

All pending application(s), if any, shall also stand disposed of.

**(ANIL KSHETARPAL)
JUDGE**

12.03.2025
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No