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

RSA No.1603 of 2024 (O&M)
Date of decision : 07.05.2025

Punjab and Sind Bank ....Appellant

Versus

Didar Singh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Adarsh Pal Kaur, Advocate and
Mr. M.S. Rana, Advocate
for the applicant/appellant.

<u>PANKAJ JAIN, J. (ORAL)</u>

CM No.5290-C of 2025

This is an application filed under Section 151 CPC seeking preponement of the date of hearing in the main appeal.

For the reasons recorded in the application, the same is allowed.

Main appeal is taken on Board today itself, for hearing.

RSA No.1603 of 2024 (O&M)

Defendant No.2, is in second appeal.

2. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position in the suit i.e. appellant as defendant No.2, respondent No.1 as plaintiff, and respondent No.3 & 4 as defendants No.3 & 4.

3. Plaintiff filed suit seeking recovery of Rs.7,75,500/- along with interest @ 12% per annum. As per the plaintiff, he was admitted to MBBS course in Shri Guru Ram Das Institute of Medical Sciences and Research on 19.06.2014. He deposited fee of Rs.6,60,000/- and another sum of Rs.1,15,500/-. Subsequently, plaintiff was shifted to Government Medical College, Amritsar. On his request, Shri Guru Ram Das Institute of Medical Sciences and Research, refunded the deposit by means of an account payee cheque bearing No.124809, dated 12.09.2014 for an amount of Rs.7,75,500/- drawn on State Bank of India, Branch Chhapa Ram Singh, Mehta Road, Tehsil & District Amritsar. Plaintiff claims to have presented the cheque in his account No.1541000411750 maintained by him with defendant No.2, on 16.09.2014. Plaintiff claims that the voucher was filled by security guard employed at the bank premises by defendant No.2. Branch Manager was requested to accept the cheque and voucher and to give the acknowledgment. Plaintiff was advised to drop the cheque and the voucher in drop box kept in the bank premises and was not given any acknowledgment.

4. After cheque could not be credited to his account for number of days, plaintiff approached defendant No.1, who informed that no cheque has been presented. Plaintiff informed that he deposited the cheque with his banker i.e. defendant No.2. Later on, it was found that an imposter by the name of Dermesh Kumar Gupta, defendant No.5, in connivance with other defendants had stolen the cheque from drop box of defendant No.2. Erasing

the name of payee i.e. plaintiff, he converted the same into his own name and presented forged cheque. Defendant No.3, the banker of Dermesh Kumar Gupta presented the cheque to defendant No.1 for clearance. The cheque was cleared. Plaintiff thus claimed that all defendants in connivance with each other caused him loss of Rs.7,75,000/-. At the behest of plaintiff. FIR No.247 dated 06.12.2014 was also got registered for offences punishable under Section 380, 420, 467, 120B IPC.

5. Suit was contested by defendants.

6. Defendant No.1 denied its connivance. As per defendant No.1 neither the cheque nor its image was presented with it for clearance. Clearance was to be processed at Central Clearing Processing Cell in Cheque Truncation System. Defendant No.1 thus denied its liability.

7. Defendant No.2 filed separate written statement denying deposit of cheque with them or the theft of cheque from their premises.

8. Defendants No.3 & 4 filed joint written statement denying the averments made in the plaint. It was however admitted by defendants No.3 & 4 that defendant No.5 dropped cheque and voucher in the drop box of defendant No.3. The same was presented and cleared through the clearing house.

9. Defendant No.5 was proceeded *ex parte*.

10. Both the Courts below have found defendants guilty of being negligent leading to loss of the plaintiff. Trial Court held that the plaintiff deposited cheque issued in his favour by the Institute with defendant No.2

for encashment. It went missing from the custody of defendant No.2. It was presented in a tampered form with defendants No.3 and 4. They forwarded the same to defendant No.1, who cleared the same despite the cheque being tampered. Plaintiff having been deprived of his rightful money, was entitled to be compensated. All defendants were rendered liable towards the plaintiff. The plaintiff was held liable to recover an amount of Rs.7,75,500/- from all the defendants jointly and severally along with interest @ 9% per annum from the date of filing of the suit till the date of decree and future interest @ 6% per annum from the date of decree till the date of actual realization.

11. Defendant No.2 preferred appeal. The same stands dismissed by the Lower Appellate Court.

12. Defendant No.2 is in second appeal before this Court.

13. Counsel for the appellant has assailed the findings recorded by the Courts below. The contention raised is that there being no evidence w.r.t. deposit of the cheque with defendant No.2/appellant, appellant ought not have been held liable.

14. I have heard counsel for the appellant and have carefully gone through records of the case.

15. Refund of fee to the plaintiff by Shri Guru Ram Das Institute of Medical Sciences and Research by way of cheque bearing No.124809, dated 12.09.2014, stands proved. It has come on record that the amount was refunded by means of account payee cheque. It also is admitted fact that

plaintiff is maintaining his account with appellant/defendant No.2. Plaintiff in order to prove that the cheque was presented by him to his banker, produced Exhibit P-8, counter-foil of the Punjab & Sind Bank. Counsel claims that it having not been signed by any of the bank officials, cannot be considered.

16. The argument raised, cannot be accepted in view of the fact that Officer Scale-I of Punjab & Sind Bank, Mr. Ravi Kumar appeared in witness box as PW7. He admitted in his deposition that the bank is maintaining a cheque drop box in the premises of branch. All the consumers, who wish to present their cheque for encashment, are required to drop their cheques in the said box. Every day at 11.30 am said box is opened. The same remains under the lock and key of the Manager of the Bank. All the cheques found in the drop box, are presented for clearance.

17. The precise case pleaded by the plaintiff is that the voucher was filled by the security guard employed by defendant No.2. On the asking of the officials, the cheque was left in the drop box for clearance. The practice at the bank premises stands proved by testimony of PW7 Ravi Kumar. Defendant No.2 being banker of the plaintiff, it was but natural for the plaintiff to present the cheque for encashment through his banker. Once, the plaintiff had proved that the cheque in dispute was issued in his name and he was maintaining account with defendant No.2 and on affidavit, stated that the voucher was filled in the hand-writing of the security guard employed by defendant No.2, the burden shifted upon defendant No.2 that the voucher

was not filled by the security guard employed/posted in the bank on 16.09.2014. In order to discharge the said burden, bank was required to examine the security guard, employed with it on the relevant date. Apart from denying and remaining evasive, appellant-Bank opted not to lead any evidence to discharge the burden that shifted upon it after plaintiff led affirmative evidence.

18. In view thereof, this Court finds that there is no scope of interference in pure findings of fact recorded by the Courts below after appreciating the evidence in its true and correct perspective.

19. Finding no merit in the present appeal, the same is ordered to be dismissed.

20. Pending application(s), if any, shall also stand disposed off.

May 07, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No