IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

237 **RSA-158-2016 (O&M)**
Date of decision: 19.11.2025

Ms. R.K.Thareja Auto Parts and another ...Appellant(s)

Vs.

J.C.Kamal ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Eklavya Gupta, Advocate for
Mr. Ashok Gupta, Advocate for the appellant.

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NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendants against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the plaintiff/respondent herein, for recovery of Rs.4 lacs, has been dismissed by both the Courts below.

2. The facts as pleaded in the plaint are that the defendant No.2 is a partner in the defendant No.1-firm which had borrowed a sum of Rs.4 lacs from the plaintiff on 01.02.2001. In repayment, defendant No.2 being partner of defendant No.1-firm, had issued a cheque No. 032614 dated 15.02.2001 for Rs.4 lacs in favour of the plaintiff in lieu of his liability. Plaintiff had presented the said cheque for encashment which was retuned due to insufficient funds vide memo dated 20.02.2001. Accordingly, plaintiff served legal notice dated 07.03.2001 upon the defendant. Thereafter, plaintiff demanded the due amount many times,

but the defendant was putting off the matter on one pretext or the other. Hence, the present suit was filed on 13.02.2004.

3. Upon appraisal of the pleadings and the evidence led by the parties, vide judgment and decree dated 01.02.2012, the learned Additional Civil Judge (Senior Division), Rajpura had decreed the suit of the plaintiff *"with costs to the effect that plaintiff is entitled for the recover sum of Rs.4 lacs along with interest @ 9% p.a. from the date of filing the suit till decree and 6% from the date of decree till actual realization."* The Civil Appeal filed by the defendants was dismissed with costs by the learned Additional District Judge, Patiala vide judgment and decree dated 19.08.2014. Hence, present second appeal by the defendants.

4. Learned counsel for the appellants submits that suit of the plaintiff could not have been decreed in view of the findings as recorded by the learned First Appellate Court at pages 45-46 of the paper book, which read as under:-

> *"So from these arguments it came out that mainly appellant/defendant opposing the case of the plaintiff on the grounds that defendant has already made the payment, and on the ground that respondent/plaintiff while appearing as his own witness in his cross examination had stated that he had made the payment of Rs. 400000/- to the appellant/defendant on 01.02.2001 out of which he had withdrawn Rs. 300000/- from his account in Centurion Bank Ltd., Chandigarh and Rs. 100000/- borrowed from his friends. The applicant/defendant placed the account statement of respondent/plaintiff in Centurion Bank. Ltd. Chandigarh on*

the file and the same is Ex. D-3, as per the account statement here was no withdrawal of Rs. 300000/- on any date prior to or on 01.02.2001 and there was no such balance in the account of respondent/plaintiff. The receiving of amount of Rs. 100000/- has also not been proved by producing the persons from whom the respondent/plaintiff stated that he had borrowed the same."

5. It is submitted that therefore, as the plaintiff was unable to prove the source of fund/Rs.4 lacs allegedly borrowed by the appellant, thus the case of the plaintiff was cast in shadow of doubt. It is further submitted that plaintiff has failed to establish his case as required as per law. In actual fact, the appellant had taken Rs.3 lacs from the plaintiff vide demand draft dated 05.02.1997. Another amount of Rs.1 lac was taken by the appellant vide demand draft dated 13.02.1997. It is submitted that the cheque No. 032614 was issued in the year 1997 (and not 2001), by the appellant in favour of the plaintiff as security of amount of Rs.4 lacs borrowed in the year 1997. Moreover, out of Rs.4 lacs, Rs.3,10,000/- was returned by the appellant to the plaintiff through cheques. This fact has been admitted by the plaintiff in another suit filed by him against the defendant which was pending at that time. Subsequently, further amount of Rs.50,000/- and Rs.80,000/- were paid by the appellant on dated 23.06.1997. Defendant also made payment of Rs.2,70,000/- in cash to the plaintiff. As such, nothing was due from the appellant to the plaintiff; and hence, suit has been wrongly decreed. He accordingly prays that the

present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

6. No other argument is raised on behalf of the appellants. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellants/defendants.

7. Perusal of the above facts reveals that even as per the case of the appellant, the amount of Rs.4 lacs was borrowed by the appellant in the year 1997. Thus, firstly, the appellant has admitted his liability in the first place. It has next been contended by the appellant that the said amount was returned by the appellant to the plaintiff. However, appellant has failed to produce any evidence in this regard to show as to how, when and in what manner was the amount of Rs.4 lacs, allegedly borrowed by the appellant in the year 1997, returned by the appellant. It is also trite that in case the said amount was returned, the appellant would have demanded that his cheque No. 032614 allegedly given by the appellant to the plaintiff in the year 1997, be also returned to the appellant, at that time by returning the borrowed amount of Rs.4 lacs. However, the appellant did not take back the said cheque; and which was encashed by the plaintiff in the year 2001; whereupon it was returned for insufficient funds. Record further reveals that defendant has stated in his cross-examination that he possessed receipts of Rs.7 lacs paid by him to the plaintiff. However, he has failed to produce the said receipts on record. Admittedly, plaintiff has also filed a complaint against the appellant in

respect of the disputed cheque No. 032614 in which the defendant was convicted as evident from judgment Ex.P4.

8. A perusal of the judgment of conviction Ex.P4 under Section 138 of the Negotiable Instruments Act shows that in the said proceedings, defendant could have taken plea that he had returned the borrowed amount; but even in the said judgment Ex.P4, there are clear findings that defendant had failed to return the said amount.

9. As regards reliance by the appellant upon the observations of the learned First Appellate Court, the same cannot be read piecemeal; and has to be read in conjunction with paragraph following which reads as under:-

> *"But to my mind this argument of the appellant has not break any ice for the appellant because in his cross examination plaintiff no where disclosed his account number of Centurion Bank so it is not on the file that how many accounts the plaintiff is having and from which Centurion Bank this amount was withdrawn and further in these type of cases firstly defendant received the money from plaintiff but at the time of return it is crude to hear from defendant that from where plaintiff arranged the money when he gave to defendant."*

10. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.

11. 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.**

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

19.11.2025 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

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