



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

**RSA-5370-2016 (O&M)
Date of Decision : 04.02.2025**

Bahadur Singh

..... Appellant

Versus

Jai Kumar Garg

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Sandeep Goyal, Advocate
for the appellant.

Mr. Jai Kumar Garg, respondent in person.

VIKRAM AGGARWAL, J (ORAL)

This is defendant's second appeal against the judgment and decree dated 05.07.2016, passed by the Court of learned Additional District Judge, Kaithal, dismissing the appeal filed by the defendant against the judgment and decree dated 30.01.2016, passed by the Court of learned Civil Judge (Junior Division), Kaithal, vide which the suit for recovery filed by the plaintiff was decreed.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. The plaintiff filed a suit for recovery of ₹58,500/- (₹45,000/- as Principal amount and ₹13,500/- as interest). The case set up was that the



defendant had taken a friendly loan of ₹45,000/- from the plaintiff and had issued a cheque bearing No.623616 dated 18.09.2009 for ₹45,000/- in favour of the plaintiff in discharge of his legally enforceable liability. The cheque issuing slip in his hand writing duly signed by the defendant was also issued. On presentation, the cheque was dishonoured vide memo dated 19.09.2009 on the grounds of 'insufficient funds'. A registered notice dated 29.09.2009 was issued to the defendant but despite the same, the payment was not made leading to the filing of the suit.

4. The defendant opposed the suit. In the written statement, certain preliminary objections as regards maintainability, locus standi, suppression of true and material facts and limitation were raised. On merits, the case set up was that the plaintiff and his son were running a financial committee whereof the defendant and other persons were members. The modus of the plaintiff was to obtain cheques from all members which included the defendant, as security. The said cheque was misused by the plaintiff. The cheques of other members were also misused and 60-70 complaints were filed by him under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). The defendant contested the said complaint and was acquitted vide judgment dated 31.10.2012, passed by the Judicial Magistrate Ist Class, Kaithal. It is thereafter that the suit was filed. The defendant denied having taken any loan or having issued any cheque.

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

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



framed by the trial Court:-

1. Whether the plaintiff is entitled for decree for recovery of Rs.58,500/- alongwith interest @ 10% as prayed for ? OPP
 2. Whether the suit of plaintiff is not maintainable ? OPD
 3. Whether the plaintiff has no locus-standi to file the present suit ? OPD
 4. Whether the suit of the plaintiff is time barred ? OPD
 5. Relief.
7. The parties led their respective evidence.
8. The trial Court decreed the suit filed by the plaintiff. The appeal filed by the defendant against the said decision was dismissed, leading to the filing of the present regular second appeal.
9. I have heard learned counsel for the appellant and the respondent in person.
10. Learned counsel for the appellant-defendant submits that both the Courts have erred in decreeing the suit. He submits that in fact the plaintiff was running a Committee and used to take cheques from all members. The plaintiff presented cheques of 60-70 persons which were dishonoured and he filed complaints under Section 138 of the N.I.Act which were also dismissed after which he filed recovery suits against all such persons. Learned counsel submits that for decreeing the suit, the plaintiff was supposed to lead cogent evidence but the Courts decreed his suit on the basis of flimsy evidence led by him and on the contrary ignored the trustworthy evidence led by the defendant.
11. Per contra, the plaintiff, who is present in person, submits that



there is no error in the judgments passed by the Courts and that the suit filed by the plaintiff was decreed only after considering the evidence led on the record of the case.

12. I have considered the submissions made by learned counsel for the appellant-defendant as well as the respondent-plaintiff, who is present in person.

13. Before advertng to the merits of the case, the application i.e. CM No.13962-C of 2016, filed by the applicant-appellant/defendant under Order 41 Rule 27 read with Section 151 CPC for producing the details of cases filed by the plaintiff by way of additional evidence, is required to be decided. By way of the said application, the defendant wishes to produce the details of all pending and decided cases filed by the plaintiff with a view to show his conduct and for the just decision of the case.

14. First of all, these details could have been produced by the defendant even before the trial Court. No reason has been given in the application as to why such details were not produced before the trial Court and when, the defendant acquired knowledge about these cases. The defendant has, therefore, not been able to show that despite due diligence, he was not able to produce the said details before the trial Court or even before the First Appellate Court. Still further, these details are not essential for the just decision of the case and even the mere contention of the defendant in this regard can be taken into consideration.

15. Reverting to the merits of the case, the copy of cheque in question was produced on record as Ex.PW4/C. It is the case of the plaintiff



that the said cheque for an amount of ₹45,000/- had been issued by the defendant in discharge of his legally enforceable liability. The signatures on the cheque were admitted. The version that the plaintiff was running a Committee with his son and that he used to obtain cheques as security is only an oral version and practically no evidence had been led to prove the said fact. Even if that be the case, the fact remains that a cheque was issued by the defendant. As to whether it was issued as security or in discharge of his legally enforceable liability would have to be seen. The cheque issuing hand written slip(s) was also produced on record as Ex.PA on which also the defendant admitted his signatures in the cross-examination. The Handwriting Expert also proved that the signatures were that of the defendant. The defendant was not able to explain as to why the said slip had been issued. Further, once the defendant took a stand that the cheque had been taken as security on account of he being a member of the committee, the onus was on him to prove the said fact. As has been noticed above also, no evidence worth its name was produced by him to prove the said fact. Further, no evidence was produced to prove the fact that the plaintiff was doing the work of financial committees.

16. The acquittal of the defendant in criminal case would also not come to his aid for, the judgment of a Court dealing criminal cases is never binding on a civil Court and further, both civil and criminal proceedings can go on simultaneously.

17. Both the Courts appreciated the evidence and returned pure findings of facts in favour of the plaintiff. In second appeal, such findings of



facts cannot be interfered with. Reference in this regard can be made to the judgment in the case of *Avtar Singh Versus Bimla Devi 2021 (13) SCC 816*.

18. No other argument was raised.

 In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

 Pending application(s), if any, stand(s) disposed of accordingly.

04.02.2025
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No