250 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-2614-C-2018 in/and
RSA-1038-2018 (O&M)
Reserved on 10.09.2025
Pronounced on : 03.12.2025
Uploaded on : 03.12.2025

Jasvir Kaur ....Appellant

Versus

Mohinder Kaur ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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Present:- Mr. Malkeet Singh Balianwali, Advocate
for the applicant-appellant.

Mr. Aditya Dassaur, Advocate
for the non-applicant-respondent.

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PANKAJ JAIN, J.

1 Defendant is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellant as defendant and respondent as plaintiff.

2 Plaintiff filed suit seeking decree of recovery of Rs.1,57,500/- on the basis of cheque dated 14.08.2009 along with interest thereon.

3 As per the case of the plaintiff, Sarabjit Singh, the deceased husband of defendant availed a loan of Rs.1.25 lacs from the plaintiff on 24.05.2009 for his personal needs. He issued a cheque of Rs.1.25 lacs on 14.08.2009 to repay the loan. She being busy could not present the same in the bank. Later on, she came to know that the husband of the defendant

expired on 23.08.2009. When asked, the defendant refused to pay back the amount, forcing the plaintiff to file the suit.

4 Suit was contested by the defendant. As per defendant, plaintiff is an active partner in a finance company under the name of M/s New Dashmesh/Lucky Finance Company (Regd.). Husband of the defendant never availed any loan from the plaintiff. Rather he availed loan from the finance company in which plaintiff is one of the partners. Husband of the defendant, however, returned the same in the year 2007. Only Rs.3,600/- were due to be paid to the finance company when the same was converted into a new loan case. Husband of the defendant again deposited an amount of Rs.21,000/- with the company against receipt. Last installment of Rs.1,500/- was paid by late Sarabjit Singh just three days prior to his death. Even though husband of the defendant had already returned the entire loan during his lifetime but the plaintiff as partner in M/s New Dashmesh/Lucky Finance Company (Regd.) issued legal notice seeking payment of Rs.2,46,000/- whereas in the present suit plaintiff claims that husband of defendant availed loan of Rs.1.25 lacs from her and not from the company on 24.05.2009. Defendant accordingly claimed that the suit being based upon false averments deserves to be dismissed.

5 Plaintiff initially appeared as PW1 and tendered her examination in chief by way of affidavit. She, however, failed to appear for the cross-examination. Major Singh, PW2 thereafter appeared as attorney holder of the plaintiff. Trial Court after analyzing the evidence threadbare came to the conclusion that the plaintiff failed to prove that she paid an amount of Rs.1.25 lacs to the husband of the defendant as claimed. No evidence was brought on

record to prove that the cheque was issued by the husband of the defendant. Trial Court accordingly dismissed the suit filed by the plaintiff.

6 Unsuccessful plaintiff preferred appeal. The Lower Appellate Court held that the plaintiff had proved that the husband of the defendant borrowed a sum of ₹1.25 lakhs from the plaintiff on 24.05.2009 and, in lieu thereof, issued a cheque in favour of the plaintiff on 14.08.2009. There being presumption under Section 118 (a) of the Negotiable Instruments Act, 1881 in favour of the plaintiff, defendant was required to rebut the same. Lower Appellate Court further relied upon Section 120 of the Indian Evidence Act, 1872 to hold that PW2 being husband of plaintiff is a competent witness, and the plaintiff cannot be non-suited merely for the reason that she failed to enter in the witness box.

7 Counsel for the appellant has assailed the findings recorded by the Lower Appellate Court. It has been contended that the finding recorded by the Lower Appellate Court that the plaintiff proved that the husband of the defendant availed loan facility from the plaintiff is not based upon any cogent piece of evidence. He submits that the plaintiff admits of running money-lending business. There is no licence produced on record. In view of the provision as contained under The Punjab Registration of Money-lenders Act, 1938 the plaintiff cannot maintain the present suit for recovery of the loan. It has been further contended that well-reasoned findings recorded by the Trial Court have been reversed merely on the basis of surmises and conjectures.

8 *Per contra*, learned counsel for the plaintiff has supported the finding recorded by the Lower Appellate Court. He submits that the cheque being a promissory note there is a statutory presumption in favour of the

holder i.e. plaintiff in the present case. It is for the defendant to rebut the same by leading cogent evidence. He submits that there is no denial by the defendant to the signatures of late Sarabjit Singh on the cheque propounded by the plaintiff. Thus, there was no requirement for the plaintiff to prove the signatures of late Sarabjit Singh on the cheque leaf. Lower Appellate Court rightly reappreciated the evidence and decreed the suit filed by the plaintiff.

9 I have heard learned counsel for the parties and have gone through the records of the case.

10 The plaintiff claims of having lent an amount of Rs.1.25 lacs to defendant on 24.05.2009. She further claims that late Sarabjit Singh in order to repay the said amount issued a cheque of Rs.1.25 lacs on 14.08.2009 which she failed to present with the bank and came to know later that Sarabjit Singh has died on 23.08.2009. The plaintiff herself though tendered in evidence her statement by way of affidavit but later on resiled from cross examination. Defendant in her written statement specifically pleaded that the plaintiff was partner in a finance company from which her husband availed loan. In replication, the plaintiff denied of being partner in any finance company. However, her husband while appearing as PW2 admitted that plaintiff is a partner in one of the finance companies. Notice issued by the plaintiff to defendant has also come on record which shows that the plaintiff while acting as partner of finance company called upon defendant to repay the loan of Rs.2,46,000/- availed by her husband. The legal notice is dated 13.06.2011. The present suit was instituted by the plaintiff on 19.07.2011. Evidently, the suit filed by the plaintiff is based upon falsehood.

11 It can be safely inferred from the evidence on record and the pleadings that it is only in the month of May or June 2011 that the plaintiff came to know about the death of Sarabjit Singh-husband of defendant. After she came to know that he has died on 22.08.2009, the present cheque which was available with the finance company from whom late Sarabjit Singh availed loan was misused by the plaintiff to institute the present suit by concocting a story of the cheque having been given by Sarabjit Singh on 14.08.2009 to repay his loan. The plaintiff could not dare to step into the dock to face the cross examination and gave an excuse of her suffering from ailment and thereby authorizing her husband to depose as her attorney. This too, proved to be false, as her husband Major Singh admitted that the plaintiff was hale and hearty. There is no evidence regarding plaintiff having ever lent an amount of Rs.1.25 lacs to Sarabjit Singh as claimed in the plaint. Once Sarabjit Singh was admittedly having financial relations with the company in which the plaintiff was partner it is highly improbable that he will avail loan from plaintiff personally and not through the finance company being run by her or that she will lend loan personally to Sarabjit Singh even when she was running a finance company herself. All these issues have remained unanswered, and the conduct of the plaintiff cuts at the very root of her case. Plaintiff has come across as an unfair litigant who has based her actions on falsehood.

12 In view thereof, this Court finds that the Lower Appellate Court erred in reversing the well-reasoned findings recorded by the Trial Court and by substituting them with mere surmises and conjectures, which are unsustainable in the eyes of law.

13 In view thereof, this Court finds that the findings recorded by the Lower Appellate Court cannot be sustained and deserve to be set aside. Judgment and decree passed by the Court of the First Instance is ordered to be restored. The suit filed by the plaintiff is hereby dismissed.

14 Appeal stands ***allowed.***

(PANKAJ JAIN)
JUDGE

03.12.2025
Pooja Sharma-I

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No