IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

125 **RSA-3030-2024 (O & M)**
Date of decision:24.03.2025

MIT SINGH BENIPAL ...APPELLANT

VS.

KULDEEP SINGH ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Mohit Jaggi, Advocate
for the appellant.

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SUVIR SEHGAL, J.

1. Assailing concurrent finding of fact recorded by the two Courts, appellant/defendant is in second appeal before this Court.

2. Pleaded case of respondent/plaintiff is that he is a non resident Indian, settled in Canada and he appointed Davinder Singh as his general power of attorney. Plaintiff keeps on visiting India and during one of his visits in October, 2007, defendant approached Davinder Singh for a friendly loan of Rs.15 lacs, which was extended by the plaintiff vide three cheques dated 05.10.2007 for an amount of Rs.5 lacs each drawn on the Punjab and Sind Bank. Loan was advanced from the joint account of the plaintiff with his wife. Defendant executed an affidavit in the shape of receipt-cum-

undertaking and agreed to repay the amount within 60 days and also agreed to pledge his share in a residential house as security. Defendant returned an amount of Rs.9 lacs into two instalments in the year 2008 and sought extension for repayment of the balance amount with interest @ 18%. After seeking extensions, defendant issued three post dated cheques dated 08.02.2016, 16.02.2016 and 22.02.2016 for Rs.5 lacs each were drawn on Punjab and Sind Bank, Sector 17, Chandigarh, in March, 2015, however, on presentation, all three were dishonoured by the banker with the remark "account closed" on 16.03.2016. A legal notice dated 21.03.2016 was served upon the defendant, which was returned undelivered. Plaintiff filed a suit for recovery of Rs.15 lacs including Rs.6 lacs towards interest @ 18% per annum. Upon being served, defendant filed a written statement taking various preliminary objections including an objection to the effect that the suit is barred by limitation. It was averred that the defendant is running a company, M/s White Wealth Punjab Feeds Pvt. Ltd. and needed money in the year 2016, when he met Davinder Singh, who was an employee of the bank, but he did not cooperate and created hurdles in the sanction of the loan. Upon recommendation of the Chief Manager, loan of Rs.83 lacs was sanctioned and defendant gave some cheques as a security, which have been misutilized by the plaintiff. Defendant has averred that he has cleared the bank loan and a 'no due certificate' has been issued. It has been further stated that in 2015, Davinder Singh approached him for purchasing his residential house but as the defendant was wary of him, he did not enter into an agreement with Davinder Singh, who got agitated and filed the suit.

Defendant specifically denied the loan and affidavit as well as the receipt-cum-undertaking. Plaintiff filed a rejoinder to the written statement and on the basis of the pleadings of the parties, Trial Court framed issues. After contest, suit has been accepted by the Trial Court by judgement and decree dated 26.09.2018. Plaintiff has been found entitled to recover Rs.15 lacs alongwith future interest @ 9% from the date of institution of the suit. Defendant remained unsuccessful in the first appeal, which has been rejected by the learned Additional District Judge, Chandigarh, vide judgement dated 23.09.2024, resulting in the institution of the present appeal.

3. Counsel for the appellant has argued that the suit was barred by limitation in as much as the loan was extended in the year 2007 and issuance of cheques in the year 2016 would not extend the period of limitation. Placing reliance upon the judgement of the Supreme Court in ***J.C. Budhraja Vs. Chairman, Orissa Mining Corporation Ltd. and another*** ***(2008) 2 SCC 444***, he has contended that a written acknowledgement of a debt after the expiry of the period of limitation would not amount to extension of time under Section 18 of the Limitation Act, 1963.

4. I have heard counsel for the appellant and considered his submission besides examining the requisitioned record.

5. In order to establish that the loan of Rs.15 lacs had been extended, plaintiff examined Binay Bajaj, PW1, PO from Punjab and Sind Bank, who brought the original record of account No.14358, which is in the joint name of Kuldeep Singh and his wife. This witness has deposed that three cheques amounting to Rs.5 lacs each were encashed from the bank

account and are reflected in their account statement Ex.PW1/A. These cheques have been encashed in favour of the defendant. The statement is supported with the testimony of Davinder Singh, PW3, attorney of the plaintiff. Kuldeep Kumar DW2, another official from the Punjab and Sind Bank, has produced the record of the bank account of the defendant, which shows that three cheques issued by the defendant in the year 2016 were presented for collection and were dishonoured as the bank account was closed. A cumulative reading of the testimony of the three witnesses as well as the documentary evidence leads to irrebuttable conclusion that an amount of Rs.15 lacs was withdrawn by the defendant from the account of the plaintiff by way of three different cheques and that the defendant had issued three cheques to the plaintiff, which were dishonoured in the year 2016. Although in his evidence, Mit Singh, DW1, has deposed that his bank account was closed and the account book had been misplaced, but there is no evidence to show that he had given any complaint regarding the loss of the original cheque book. In any case, the testimony of the defendant is contrary to the stand taken by him in the written statement, where he stated that he had issued three blank cheques as a security for the loan advanced to him. It, therefore, stands established that the loan was advanced to the defendant, who had issued three cheques for the amount of Rs.15 lacs to the plaintiff, which were dishonoured.

6. The issuance of three cheques to the plaintiff, which are duly signed by the defendant shows that an amount of Rs.15 lacs was to be paid by the defendant. Even though the body of the cheques is filled in with a

different hand, but the fact that they reflect that they have been duly signed by the defendant carry a presumption under the Negotiable Instruments Act, 1881. Although, the presumption is rebuttable, but defendant has not led any evidence to rebut the statutory presumption. As the negotiable instruments issued in favour of the plaintiff were dishonoured on presentation on 16.03.2016, it furnishes a fresh cause of action to the plaintiff, who filed a suit for recovery on 26.09.2018. This suit is, therefore, within the prescribed period of limitation and the findings recorded by the Courts below on both the material issues are based on proper appreciation of the facts and law. Judgment relied upon by counsel for the appellant is not applicable. No interference is called for in the judgements and decrees passed by the courts below, which are affirmed.

7. Appeal being bereft of merit, is dismissed with no order as to costs.

24.03.2025 **(SUVIR SEHGAL)**
sheetal **JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No