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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 105/2025, CM APPL. 43757/2025

VISHWAS AWASTHI

.....Appellant

Through: Mr. Jai Wadhwa and Mr. Ronak
Karanpuria, Advocates.

versus

AZAM KHAN

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **23.07.2025**

CM APPL. 43756/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

RSA 105/2025 & CM APPL. 43757/2025 (stay)

By way of the present regular second appeal filed under Order XLII read with section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns judgment and decree dated 06.05.2025 passed by learned District Judge, Tis Hazari Courts, Delhi in suit bearing RCA DJ No.106/2022.

2. Mr. Jai Wadhwa, learned counsel appearing for the appellant submits, that the dispute in the matter is in relation to whether or not a sum of Rs.1 lac was paid by the appellant to the respondent in connection with an agreement to sell dated 27.09.2014.
3. Mr. Wadhwa has taken the court through the record of the case and *inter-alia* points-out the observation made by the first appellate court in paras 8, 9 & 10 of the judgment dated 06.05.2025 which read as follows:



“8. Admittedly, the flat was handed over to the defendant. It is also not in dispute that Rs.9,00,000/- has been paid out of total consideration amount of Rs. 10 lakh. The dispute is only with regard to Rs. 1 lakh. It is also not in dispute that the receipt dated 05.03.2015 was signed by the plaintiff as well as the defendant. The receipt dated 05.03.2015 shows that the plaintiff has received the full and final payment, however, the said receipt contains the cheque No. 24193 for Rs. 1 lakh. Admittedly, the said cheque was never presented for encashment. The original cheque still lies in the custody of the defendant.

“9. The possession of the cheque of Rs. 1 lakh by the defendant gives rise to the following two inferences:-

- a) First, the cheque was not handed over to the plaintiff; or*
- b) secondly, the cheque was returned over by the plaintiff to the defendant in lieu of the cash amount of Rs. 1 lakh.*

“10. The defendant has taken the plea that the plaintiff has handed over the original cheque to him in lieu of the payment in cash. This court has to examine which of the aforesaid inference can be drawn from the averments on the record. Ld. Trial Court held that the defendant did not produce any receipt for the payment of Rs. 1 lakh. No reason has been given by the defendant as to how did he not take the receiving of the plaintiff when he gave Rs. 1 lakh in cash. Ld. Trial Court has also pointed out towards the contradictions coming in the testimony of the defendant as at one place, he stated that the cheque was given to the plaintiff on 09.03.2015 in presence of witness, however, at the later stage of cross-examination, he stated that there was no one present except the parties of the suit at the time of transaction. Ld. Trial Court has considered this as material contradiction. Further, Ld. Trial Court did not rely upon the DW-3, who stated that the cheque of Rs. 1 lakh towards the remaining sale consideration was delivered by the defendant to the plaintiff before him on 09.03.2015. Ld. Trial Court held that the DW-3 in his cross-examination stated that he does not remember whether the cheque mentioned in the receipt is the same cheque which was handed over by the defendant. Further, Ld. Trial Court held that mere handing over the cheque to the defendant does



not prove that the defendant had paid Rs. 1 lakh in cash to the plaintiff.”

4. In this backdrop, Mr. Wadhwa submits that, they have set-out the proposed questions of law in the memo of appeal.
5. The court has perused the proposed questions of law.
6. The essential question sought to be raised by way of the present regular second appeal is whether or not the appellant has been able to prove that he had paid to the respondent Rs. 1 lac in cash in lieu of the cheque that had been given to the respondent earlier-on; but which cheque was subsequently returned.
7. This court is of the view that the issue sought to be raised is *purely* a question of fact, on which the learned trial court as well as the learned first appellate court have taken concurrent views.
8. In the circumstances, in the opinion of this court, no question of law, much less any substantial question of law has been raised in the present proceedings.
9. The regular second appeal is accordingly dismissed at the stage of issuance of notice itself.
10. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 23, 2025

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