



\$~135

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

+ **RSA 107/2025 & CM APPL. 45176/2025**

SHIV KUMAR KASHAYP

.....Appellant

Through: Mr. Ghansham Singh, Mr. Bharat Prakash, Mr. Jayveer Singh, Mr. Shubham Aggarwal, Mr. Dhairya Arora and Mr. Shahin Hussain, Advocates.

versus

NAVNEET SINGHAL

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **28.07.2025**

CM APPL. 45175/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

CM APPL. 45177/2025

By way of the present application filed under Order XLI Rule 3-A of the Code of Civil Procedure, 1908 read with section 5 of the Limitation Act 1963, the appellant seeks condonation of about 34 days' delay in *filing* the regular second appeal.

2. For the reasons stated in the application, which is duly supported by affidavit, the delay is condoned.
3. The application is allowed.
4. The appeal is taken on Board.



RSA 107/2025

5. By way of the present regular second appeal filed under section 100 read with Order XLII CPC, the appellant impugns judgment and decree dated 20.03.2025 passed by the learned District Judge, Central District, Tis Hazari Courts, Delhi in regular civil appeal bearing RCA No.71/2023.
6. The court has heard learned counsel appearing for the appellant at length.
7. Briefly, the respondent (plaintiff) had filed the suit under Order XXXVII CPC seeking recovery of Rs.2.5 lacs based essentially on a cheque issued by the appellant (defendant) to the respondent (plaintiff), which was dishonoured upon presentment to the respondent's bank, viz. M/s ICICI Bank Ltd., Karol Bagh Branch, New Delhi, on the ground of 'Insufficient Funds'. A cheque return memo dated 05.03.2012 was issued by the bank; pursuant to which, the respondent issued to the appellant demand notice dated 23.03.2012 but despite receiving the notice the appellant did not pay the cheque amount.
8. Learned counsel for the appellant contends however, that the judgment and decree has been passed based *not* upon the claim in the plaint filed by the respondent *but* on the basis of what came to be narrated by the appellant in the written statement.
9. It is pointed-out that this aspect has been dealt-with by the learned first appellate court in impugned judgment dated 20.03.2025 in the following manner:



“19. In a nutshell, the case of the plaintiff is that a friendly loan of Rs. 2,50,000/- was given in cash on 28.05.2011 to the defendant and the defendant issued cheque bearing no. 920166 dated 02.03.2012 which was returned dishonoured. The defendant despite having been served with legal notice dated 23.03.2012 has not returned the payment of Rs. 2,50,000/- to the plaintiff. The defendant in his written statement admitted that financial assistance of Rs. 11 Lacs was provided to M/s S.R Media on 13.07.2011 by the plaintiff who is the proprietor of M/s India Ad Mark Company. It is stated by the defendant in the written statement that at the time of advancing of financial assistance of Rs. 11 Lacs, four security cheques were taken by the plaintiff which were to be returned after the settlement of account of Rs. 11 Lacs. It is further the case of the defendant in the written statement that out of the said amount of Rs 11 Lacs, an amount of Rs. 8,50,000/- was returned to the plaintiff. It is further the case of the defendant in the written statement that the defendant through his proprietorship concern i.e. M/s S.R Media provided services for a sum of Rs. 3,30,550/- from 01.07.2011 to 06.01.2012. In order to prove the rendering of the said services, the defendant has placed reliance upon the ledger account i.e. Ex. DW2/B. In the cross-examination of PW-1, nothing could be extracted from the said witness. The defendant/DW-2 however, in his cross-examination had admitted that he was granted an amount of Rs. 11 Lacs by the plaintiff who also admitted that if from the said amount of Rs. 11 Lacs, an amount of Rs. 8.50 Lacs is deducted, the balance amount due becomes Rs. 2,50,000/-. It has further been admitted by the defendant in his cross-examination that the defendant had received the legal notice dated 20.03.2012 and had not replied to the said legal notice and also that the cheque in question bear his signatures and had given the same to the plaintiff. Thus, the defendant had admitted the fact that he had issued the cheque in question in favour of the plaintiff who is the sole proprietor of M/s India Ad Mark Company in whose favour the cheque has been issued and also that the same stands dishonoured and that legal notice was received by the defendant. Even under the Negotiable Instruments Act, a presumption has been raised against the defendant under the provisions of Section 118 of the Negotiable



Instruments Act who was required to rebut the same by leading cogent evidence. The defendant who had taken the stand in his written statement that it had provided services from his sole proprietorship concern i.e. M/s S.R Media for an amount of Rs. 3,30,550/- w.e.f 01.07.2011 to 06.01.2012 had relied upon the ledger and the printout of the emails. However, besides the ledger, the defendant has not placed on record any invoice etc which has been raised against the plaintiff to substantiate the conduct of any business by the defendant with the plaintiff. Even, the ledger which has been placed on record by the defendant does not contain the signature of the plaintiff.”

(emphasis supplied)

10. Accordingly, in sum and substance, the learned trial court as well as the learned first appellate court, have proceeded on the basis that the respondent had extended a friendly loan of Rs. 11 lacs to the appellant; and the respondent has admitted that from the loan amount, Rs.8.5 lacs was refunded by the appellant. It was in this backdrop that out of the 04 security cheques issued by the appellant, the subject cheque for Rs.2.5 lacs was presented, which was the balance amount, which was dishonoured. The learned trial court has further proceeded on the presumption of law that arises under sections 118 and 139 of the Negotiable Instruments Act 1881; and the view taken by the learned trial court has been upheld by the learned first appellate court.
11. In the foregoing circumstances, the learned trial court has decreed the suit in the sum of Rs.2.5 lacs alongwith *pendent-lite* interest at 6% per annum and future interest at 9% per annum till realisation. Subsequently, the learned first appellate court has dismissed the appeal filed against judgment and decree dated 26.04.2023 passed by the learned trial court, finding no infirmity in it.



12. Impugning the order of the first appellate court, the appellant has sought to raise the following questions of law in the present second appeal:

“12. That following substantial questions of law are involves in this Appeal Memorandum:-

A) In absence of evidence on record proving the respondent/plaintiff to be proprietor of M/s INDIA AD MARK COMPANY and mere statement in affidavit in this regard are sufficient to meet the requirement of law, are the courts below right in not deciding the said objection in-spite of fact that appellant/defendant is raising this issue from initiation of proceedings?

B) Are the courts below right in decreeing the suit for recovery of Rs.2,50,000/- out of transaction of Rs.11,00,000/- dated 13.07.2011 beyond the pleadings in suit and relief claimed ?

C) Are the courts below right in decreeing the suit in absence of evidence on record proving the resources and actual alleged friendly loan transaction of Rs.2,50,000/- in cash dated 28.05.2011 ?

D) Were there pleadings in the suit for granting the relief of interest?

E) Whether non-filing of replication in view of Order 8 Rule 9 read with Order 8 Rule 5 and Order 8 Rule 10 of the Code of Civil Procedure, 1908 (CPC) is deemed admission of facts of the written statement?

F) Are the courts below recorded in the judgments the effect of non-filing of replication specifically when the objection raised by the appellant/defendant?

G) Had the appellant/defendant raised a probable defence to the satisfaction of the Court, the presumptions under Section 118(a) or 139 of the Negotiable Instruments Act were yet in favour of the respondent/plaintiff?

H) Are the presumptions U/s 118 (a) or 139 of the



Negotiable Instruments Act not rebutted by the appellant/defendant by raising a probable defence and evidence to the satisfaction of the Court and to dislodge the presumption raised against him ?

I) Whether the judgment and decree of the lower appellate court upholding the judgment of the trial court is sustainable in law?"

13. Upon a conspectus of the foregoing, in the opinion of this court, considering the simple and straightforward claim in the plaint, the proposed question of law at para 12(A) above is not ‘substantial’; and the proposed questions of law set-out in paras 12(B) to (I) do not arise for consideration in the present case.
14. As a sequitur to the above, this court finds no merit in the present second appeal, which is accordingly dismissed at the stage of issuance of notice itself.
15. The appeal stands disposed-of.
16. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 28, 2025/ss