

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present :
THE HON'BLE JUSTICE ARINDAM MUKHERJEE

IA GA NO. 2 of 2025
In
CS 199 of 2024
SUBHAS CHANDRA AGARWALLA
VS
DR. SONALI BASU

For Plaintiff : Mr. Aritra Basu, Adv.
Mr. Souradeep Banerjee, Adv.
Ms. Sonia Sharma, Adv.
.....Advocates

For the Defendant : Mr. Pourush Bandyopadhyay, Adv.
Mr. Kamran Hussain, Adv.
Mr. Shivam Pathak, Adv.
..... Advocates

Heard On : 25th March, 2026.

Judgment on : 25th March, 2026.

Arindam Mukherjee, J:

- 1) In a suit for money lent and advanced the plaintiff has taken out the instant application inter alia for judgement on admission.
- 2) It is the case of the plaintiff as borne out from the plaint and the documents annexed to the application are as follows:-

- a) The defendant joined a school by the name of Sri Sri Academy, Asansol of which the plaintiff is the Patron.
- b) The defendant represented to the plaintiff that she had taken loan at high interest rate against two flats and jewelleries from LIC Housing Finance. Two flats are respectively flat no. 5G and 5F at the 4th floor of premises no. 37 Marias Bhumi Road, Ward no. 3, Dumdum, Dist- North 24 Parganas (hereinafter for the sake of convenience referred to as the said flats). The huge interest was causing hardship to the defendant for which she wanted a loan of Rs. 54,00,000/- from the plaintiff on the understanding that a sum of Rs. 1,00,000/- will be paid on monthly basis from her salary to repay the loan in 54 monthly instalments without any interest. On the basis of such request, the plaintiff agreed to give a temporary accommodation loan of Rs. 54,00,000/- on the same being repaid by a monthly instalment of Rs. 1,00,000/- to be adjusted from the defendant's salary. The defendant also handed over copies of the title deed of the said two flats to the plaintiff.
- c) The agreement by which the plaintiff agreed to lend out Rs. 54,00,000/- and defendant agreed to receive said sum as the loan took place at the plaintiff's office situated at the 4th Floor, Ideal Centre, 9, AJC Bose Road, P.S- Shakespeare Sarani, Kolkata- 700 017 within the Ordinary Original Civil Jurisdiction of this Court.

- d) In terms of the said agreement the plaintiff had in two tranches transmitted a sum of Rs. 27,00,000/- on 29th December, 2022 and 3rd January, 2023 through his banker Axis Bank Ltd. Shakesphere Sarani Branch also within the jurisdiction of this Court. The plaintiff has annexed the bank account statements of the plaintiff's account maintained with Axis Bank.
- e) The defendant paid only a sum of Rs.1,75,000/- out of Rs.54,00,000/- and resigned from the said school thereby leaving an unpaid amount of Rs. 52,25,000/-.
- f) The plaintiff by a letter dated 14th December, 2023 called upon the loan and requested the defendant to pay the said sum of Rs.52,25,000/- at the earliest.
- g) The defendant according to the plaintiff after receiving the said letter handed over a cheque for Rs. 52,25,000/- drawn on Axis Bank Limited, Jhansi-284001 (UP) Branch towards repayment of the unpaid loan. The said cheque was dated 16th July, 2024 and bears the number 105793. The said cheque on being presented for encashment was dishonoured for "funds insufficient". The plaintiff has annexed a photocopy of the said cheque as also the cheque returning memo.
- h) The plaintiff has claimed interest at the rate of 18% from 14th December, 2023 to 16th September, 2024 aggregating to 277 days. The interest component as shown in the plaint is Rs. 7,13,749/-. The plaintiff therefore has claimed a decree for

Rs. 59,38,749/- and further interest at the rate of 18% till repayment.

- i) The suit was instituted on or about 18th September, 2024.
- 3) The plaintiff says that receipt of the money aggregating to Rs. 54,00,000/- is admitted by the defendant. The receipt of the letter dated 14th December, 2023 is also admitted by the defendant. No payment except Rs.1,75,000/- has been admittedly made out of the said sum of Rs.54,000/-.
- 4) The defendant, however, has attempted to deny the receipt of the money as loan. It is the case of the defendant that the same was by way of a gift from the plaintiff to the defendant. The defendant has also denied the signature on the cheque as also the handwriting contained in the said cheque but has admitted that cheque was against the bank account of the defendant. The plaintiff says that there is no corroborating evidence in support of the case sought to be made out by the defendant. The defence of the defendant, therefore, is ex facie sham coupled with admission of receipt of the money, non-payment thereof except a sum of Rs. 1,75,000/- complied with issuance of cheque for the exact sum of Rs. 52,500/- which was dishonoured for funds insufficient entitles the plaintiff to a judgment on admission. The plaintiff in support of his case has relied upon the judgment reported in **2016 SCC Online Cal 7418(Concast Steel & Power Limited v. Ramesh Gudla)** and **2011(2) CHN 527 (Adhunik Ispat Limited v. Triveni Infrastructure Development Co. Limited).**

- 5) The plaintiff, therefore, prays for a judgment on admission for a sum of Rs.59,38,749 with further interest at the rate of 18% per month.
- 6) The defendant has firstly taken the point that there is no admission. Assuming without admitting the case of admission, if any, as made out by the plaintiff is also conditional and is capable of being explained. The documents relied upon by the plaintiff are disputed and as such there can be no judgment on admission as prayed for by the plaintiff. The defendant in this regard has referred two judgements reported in ***AIR 2006 Cal 137 (Smt. Dipali Biswas & Ors. Versus Reserve Bank of India), (2005) CHN 601 (Dinesh Kumar Singhania Vs Calcutta Stock Exchange Association Limited)***. The defendant has also denied the agreement between the plaintiff and the defendant, pursuant to which the sum of Rs. 54,00,000/- was remitted to the defendant by the plaintiff. The said sum of Rs.54,00,000/- was according to the defendant given as gift by the plaintiff to the defendant and as such the question of loan does not arose. It is the further case of the defendant that the plaintiff was closely associated with the defendant's banking and financial affairs and had access to the signed instruments and banking particular and indicates though not pleaded in clear terms that the cheque was obtained in view of such relationship. The defendant has also submitted that the cheque was never made over to the plaintiff. It was given to the school authority of Sri Sri Academy School, Asansol which was used by the plaintiff as admission of liability.

The defendant has also submitted that there can be no admission on the part of the defendant on the basis of presumption as contained under Section 118 of Negotiable Instrument Act, 1881 (hereinafter referred to as N.I Act). The presumption under the said Section is rebuttable and the defendant has prima facie rebutted the same and should be afforded an opportunity to prove her case by supporting evidence at the trial. No decree on judgment on admission can be passed at this stage. The defendant on being denied of such opportunity if judgment on admission is made accepting the contention of the plaintiff, the defendant will be highly prejudiced. The defendant with regard to presumption under N.I. Act has relied upon judgment reported in **(1993) 3 SCC 35 (Bharat Barrel & Drum Manufacturing Company Versus Amin Chand Payrelal)**.

- 7) The defendant also says that the return of cheque for insufficiency of fund does not establish the underlying debt nor can it be construed acknowledgement of liability to hold that there is a presumption as to admission of liability. In this context the defendant has relied upon judgement reported in **(2023) 16 SCC 125 [Rajaram S/O Sriramulu Naidu (Since Deceased) Through Legal Representatives Versus Maruthachalam (Since Deceased) Through Legal Representatives]**.
- 8) The defendant has also contended that judgment on admission under the provisions of Order XII Rule 6 of Code of Civil Procedure, 1908 (in short CPC) cannot be passed on the presumption that the cheque was for the discharge of any debt or

other liability. It should be also held in the facts of the case that the cheque was admittedly executed. The defendant has denied the execution of the cheque. In support of this contention, the defendant has relied upon a judgment reported in **2019 (5) SCC 418 (Basalingappa Versus Mudibasappa)**.

- 9) It is ordinarily unbelievable that someone will gift a sum of Rs. 54,00,000/- without any document to an outsider i.e., not related or connected with the donor. The gift is ordinarily contemplated out of mutual love and affection of the donor to the donee which is clearly expressed either in writing or by conduct. In the instant case, there is no supportive fact or document wherefrom it will be borne out or demonstrate that there was mutual love and affection between the plaintiff and the defendant for which the plaintiff had gifted the sum of Rs. 54,00,000/- to the defendant. Moreover there is no corroborating evidence in support of the gift. If the amount was given as a gift by the plaintiff to the defendant, the defendant ought to have shown it as a gift in her books of accounts on the basis whereof her income tax return was filed in respect of the relevant assessment year. Admittedly the monthly salary of the defendant made her annual income tax taxable during the relevant period for which the defendant had to file her income tax return for the financial years 2022-2023 corresponding to the assessment years 2023-2024. Even though the defendant is a salaried person still then receipt of Rs.54,00,000/- in a financial year would attract income tax on the same which was obligatory on the part of the defendant to explain. The defendant

has produced no corroborating documents like her books of accounts and income tax return to demonstrate that the money received by the defendant from plaintiff was on account of gift to rebut the presumption as to loan.

- 10) The defendant says that the sum of Rs. 1,75,000/- was adjusted from her salary towards part repayment of the loan. If such adjustment had taken place contrary to the wishes of the defendant, the defendant ought to have raised protest against the same immediately after coming to know about the adjustment. There is no protest letter either pleaded or disclosed by the defendant in respect thereof.
- 11) The receipt of the letter dated 14th December, 2023 is not disputed by the defendant. If the amount claimed by the plaintiff as unpaid loan in the said letter was by way of gift as contended by the defendant then the defendant ought to have replied to the same and disputed that the money claimed by the plaintiff is not loan but a gift. The defendant has not raised any protest. There is no pleading to that effect or any document disclosed in that regard.
- 12) So far as the cheque is concerned, the defendant has tried to make out a case that the cheque was not issued by the defendant by denying the signature and the hand writing contained therein. The dishonour of cheque is evident from the cheque return memo. This fact was also known to the defendant immediately after 22nd July, 2024 as her bank had communicated the same after deducting the charges for dishonour. The defendant had allegedly

made no protest to the bank complaining about fraudulent act on the part of the plaintiff. No complaint was also lodged with the police authorities immediately after 22nd July, 2024. There is no statement or complaint to the police after the cheque was fraudulently obtained by the plaintiff from the defendant as alleged by the defendant. No protest letter to the bank has also been disclosed. There is also no other transaction between the plaintiff and the defendant for which the plaintiff had given the money coupled with exact amount in the cheque demonstrate that preponderance of facts supports the plaintiff's case.

- 13) The argument made by the defendant as to presumption under Section 118 of the N.I. Act is also untenable in the facts of the case. In any event the explanation sought to be given by the defendant that the said cheque was made over to the school authority in blank is shorn of particulars and is not supported by any fact or document.

It is correct that an admission can be explained by way of rebuttal. The explanation given by the defendant and considered in the light of the chain of events is much short of explanation by which the plaintiff's claim can be rebutted. There is neither any direct evidence nor the preponderance of the facts support the defendant's case.

- 14) The judgment in Uttam Singh Duggal (supra) lays the guidelines for adjudicating an application for judgment on admission. The judgment in Bharat Barrel (supra) cited by the defendant lays down the law that presumption as to issuance of a cheque is for a

consideration is rebuttable by direct evidence or by preponderance of facts goes against the defendant as preponderance of facts on the contrary establishes the case of the plaintiff. In the case of Rajaram (supra) cited by the defendant it has been held that in a civil suit based on admission through issuance of cheque is based on preponderance of probability unlike a criminal case where the prosecution has to prove beyond reasonable doubt as to the execution of the cheque. This legal provision has been further elucidated in Basalingappa (supra). The denial of the cheque having not been issued by the defendant is also not acceptable as preponderance of probabilities in the instant case takes the same out of the ratio laid down in Rajaram (supra). The ratio laid down in the other judgments cited by the defendant does not fit into the facts of the case made out by the defendant although, there is no dispute as to the same.

- 15) After hearing the parties, considering the materials on record and the judgments cited at the bar and the discussion as aforesaid, I do not find any substance in the argument advanced by the defendant in the context of the case in hand.
- 16) In the aforesaid facts and circumstances, the plaintiff is entitled to a judgment on admission for a principal sum of Rs.52,25,000/-.
- 17) There is no rate of interest pleaded by the plaintiff in the agreement. However, in view of the provisions of Section 90 of the N.I. Act a cheque being a negotiable instrument on its dishonor attracts interest at the rate of 18% per annum. The cheque as per the return memo was dishonoured on 22nd July, 2024.

- 18) The plaintiff, therefore, shall be entitled to interest at the rate of 18% per annum from 22nd July, 2024 until realization of the principal sum of Rs. 52,25,000/-.

In view of the provisions of Order XII Rule 6 of CPC, a decree follows.

- 19) The decree on the basis of the judgment on admission be drawn up expeditiously.
- 20) With the passing of the judgment on admission followed by a decree which is executable, if not satisfied, the interim order of injunction in respect of the said two flats stands vacated and/or discharged.

GA 2 of 2025 is disposed of.

CS 199 of 2024

The plaintiff submits that with the passing of the judgment on admission for which a decree follows, there remains no outstanding issue or claim of the plaintiff. The plaintiff, therefore, submits that the suit be also disposed of in terms of the decree that is passed on judgment on admission.

By consent of the parties, the suit is treated as on the day's list and is decreed in terms of the judgment on admission passed in favour of the plaintiff as against the defendant in GA 2 of 2025.

CS 199 of 2024 stands disposed of.

(ARINDAM MUKHERJEE, J.)