



2026:DHC:2103



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 12th January, 2026

Pronounced on: 13th March, 2026

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RFA 271/2025 & CM APPL 16971/2025

MOTI LAL

S/o Late Sh. Ram Gopal,
R/o C-7, Janhit Apartment, Rohini,
Sector- 9, Delhi- 85

..... Appellant

Through: Mr. Gobind Malhotra, Mr. Lovish
Sharma, Mr. Rehan Saifi,
Mr. Gurpreet Singh, Ms. Namrata
Malhotra and Ms. Avneet Kaur,
Advocates.

versus

PREM CHAND

(Proprietor of M/S Suraj Mall Ghanshyam Dass),
R/o 2735/4, Mohan Lal Place,
Naya Bazar, Delhi-110006

ALSO AT:

House No. BH-28A, East Shalimar Bagh,
Delhi-110088

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Appeal has been filed under Section 96 and Order XLI of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) against the



Judgment and Decree dated 22.11.2024 passed by the Ld. District Judge (Central), Delhi, whereby Suit for recovery of Rs.4,90,000/- filed by the Plaintiff/Appellant, was **dismissed for want of evidence**.

2. **Briefly stated**, the Appellant, *Mr. Moti Lal* filed a **Civil Suit No. CS DJ 53/2021** titled "*Moti Lal v. Prem Chand*" for Recovery of Rs.4,90,000/-. It was stated by the Plaintiff that in May 2017, a sum of Rs.7,00,000/- with interest at the rate of 1% per month, was advanced in cash to the Respondent/Defendant, *Mr. Prem Chand*, which was repayable within 2–3 months, *vide a* handwritten Undertaking/**Receipt dated 02.06.2017**, which was issued on the Letterhead of the proprietorship concern of the Respondent.

3. The Appellant submitted that the Respondent had repaid a total sum of Rs.4,00,000/- (Rs.2,00,000/- on 02.09.2018, Rs.1,50,000/- on 07.01.2019, and Rs.50,000/- on 08.02.2020), and **that a balance amount of Rs.3,00,000/- remained outstanding**, which the Defendant failed to pay, despite service of the Legal Demand Notice dated 11.08.2020.

4. The Appellant, on 18.01.2021, instituted a Suit under Order XXXVII CPC (later converted into an ordinary Civil Suit *vide* Order dated 04.02.2021) for the recovery of **Rs.4,90,000/-** (Principal Rs.3,00,000/- plus interest Rs.1,90,000/-) against the Respondent, before the Ld. District Judge, Delhi.

5. The Respondent/Defendant in his **Written Statement admitted taking the loan of Rs.7,00,000/- and issuing the Undertaking dated 02.06.2017**, on the Letterhead of his Firm, but submitted that the loan had been duly returned in cash in the month of July 2017, and vehemently



refuted the alleged part payments and Receipts thereof, as contended by the Appellant.

6. The Respondent further stated that he **did not seek a Receipt** of his alleged repayment of Rs.7,00,000/-, on account of good relations with the Appellant.

7. The Respondent filed an **Application under Order VII Rule 11** and Section 151 CPC dated 12.03.2024 praying for dismissal on the grounds that there is no cause of action in the case of the Appellant and that the Suit is barred by limitation as the same was filed on 18.01.2021 for a transaction of May 2017.

8. The Application was dismissed by the Ld. Trial Court, *vide* Order dated 29.04.2022, who observed, *inter alia*, that by entering and executing such cash transactions, the parties acted in contravention of the statutory provisions regulating cash transactions exceeding Rs.50,000/-, and are consequently liable to face and bear the repercussions of any adverse consequences resulting from their deliberate non-compliance with the law.

9. The Ld. Trial Court *vide* Order dated 13.07.2022 framed the following issues:

1. *“Whether the defendant had already returned Rs 7 lakhs to the plaintiff as mentioned in preliminary objection No. 4 of the written statement ? OPD*
 2. *Whether the suit of the plaintiff is time barred? OPD*
 3. *Whether the plaintiff is entitled for the recovery Rs. 4,90,000/- as mentioned in prayer clause? OPP*
 4. *Whether the plaintiff is entitled for pendent-lite and future interest @ 12% per annum or at any other rate? OPP*
 5. *Relief.”*
10. The Plaintiff/Appellant did not adduce any evidence in support of his case.



11. The Respondent/Defendant, examined himself as DW-1 and his wife DW-2, namely *Smt. Raj* in support of his defence.

12. **The Ld. Trial Court, on appreciation of the evidence, held** that the Defendant failed to discharge his onus to prove repayment. The Defendant was also deprived of an opportunity to cross-examine the Plaintiff.

13. **Further, it was observed that,** the Plaintiff/Appellant also failed to prove his case and that the documents relied upon by the Plaintiff in his Plaint (including the undertaking/receipt dated 02.06.2017), were not put to the Defendant, in evidence. **The Suit of the Appellant/Plaintiff was, thus dismissed.**

14. **The Appellant has challenged the dismissal of the Suit, on the grounds that** the Ld. Trial Court has failed to appreciate that admitted facts need not be proved under *Section 58 of the Indian Evidence Act, 1872*. Once the Respondent has admitted receiving Rs.7,00,000/- from the Appellant, the onus to establish repayment, lies entirely on the Respondent.

15. It is asserted that the Ld. Trial Court's observation regarding non-production of Receipts during cross-examination by the Appellant, is irrelevant and not fatal to the Appellant's case, as the Suit seeks recovery of only of Rs.4,90,000/- (Principal Rs.3,00,000/- plus interest Rs.1,90,000/-), out of an amount of Rs.7,00,000/- which has already been admitted by the Respondent and thus, the Impugned Judgement is liable to be set aside.

16. The Appellant placed reliance on *Section 103 of the Indian Evidence Act, 1872*, which provides that the burden of proof as to any particular fact lies upon the person who wishes the Court to believe its existence. Therefore, the Respondent was required to discharge his independent burden, notwithstanding the Appellant's decision not to adduce evidence.



17. The *Appellant/Plaintiff* further submits that being a layman and a senior citizen, he acted upon the advice of his counsel and on 18.09.2024, when he made a statement before the Ld. Trial Court that he did not wish to lead any evidence. It is urged that such a statement cannot be construed to absolve the Respondent/Defendant of the burden of proof cast upon him in law.

18. The Respondent having failed to appear despite Service in the Appeal, was proceeded against *ex parte*, vide Order dated 12.01.2026.

Submissions heard and record perused.

19. The *Plaintiff* had filed the Suit for recovery of Loan of Rs.7,00,000/- from the defendant.

20. The *Appellant/Plaintiff* further asserted that the Defendant made part repayments of the loan amount by paying Rs.2,00,000/- on 02.09.2018, Rs.1,50,000/- on 07.01.2019 and Rs.50,000/- on 04.02.2020, of which, endorsements were made on the Receipt itself, leaving a balance of Rs.3,00,000/- on which the Appellant claimed interest @ 12% per annum, amounting to 1,90,000 and consequently sought recovery of Rs.4,90,000/- from the Defendant.

21. The Respondent/Defendant, in **Written Statements as well as in his examination as DW-1**, categorically admitted having received the loan amount of Rs.7,00,000/- from the Appellant/Plaintiff, as well as the execution/issuance of the *Undertaking/Receipt dated 02.06.2017* on the Letterhead of his proprietorship concern.

22. Section 58 of the Indian Evidence Act, 1872 embodies the rule that **facts admitted need not be proved**. Thus, the foundational fact of advancement stands established under Section 58 of the Indian Evidence



Act, 1872, requiring no further proof by the Appellant. The controversy does not center around “*whether a loan was advanced*” for which the burden was on the Plaintiff, *but narrows down to the Defendant’s plea of discharge, namely, whether the entire loan stood repaid in cash in July, 2017, the onus of which, rests on the Defendant.*

23. The Defendant *claimed that the entire transaction took place in cash and no receipt was ever executed vis-à-vis the repayment.* The evidence was commenced by the Respondent to discharge his onus of proving the return of the loan.

24. While defendant as DW-1 deposed in his examination in chief, that he had returned the Loan amount, but made telling admission in his cross-examination, relevant part of which is reproduced as under:

“...I was doing the business of pulses till last 2021. It is correct that the loan amount of Rs. 7 Lakhs was received by me from the plaintiff. The aforesaid loan amount was returned in the month of July 2017 in one go. The aforesaid loan amount was returned in cash. I do not remember denomination of the notes. The aforesaid loan amount was returned in presence of my wife namely Raj. I do not remember the specific date in the month of July, 2017 when the loan amount was returned. No agreement was executed except one letter dated 02.06.2017 was issued by me. The aforesaid letter containing the statement of defendant no. 1 Prem Chand (I) that loan amount of Rs. 7 Lakhs was received by me. At the time of returned of loan amount, no one was present except my wife. Vol. I do not remember whether any other person was also present at that time. The aforesaid loan amount was collected by plaintiff from my house. I do not remember for what purpose I took the loan. I am the income tax payee. It is correct that I have not mentioned the aforesaid transaction in my ITR. The letter dated 02.06.2017 was handed over by me to the plaintiff. I demanded back this letter from the plaintiff but he did not return the same. I had not made any complaint with police. I have not filed any case in this regard.



I do not remember exactly how much interest I paid. Vol. However I have paid the entire interest. It is wrong to suggest that I have not repaid the loan amount to the plaintiff. It is incorrect that I had made payments of Rs. 2 Lakhs on 02.09.2018, Rs. 1.50 Lakhs on 07.01.2019 and Rs. 50,000/- on 08.02.2020. Vol. However I had returned the entire amount in one go. I can earn Rs. 1 Lakh per month in the year 2017 from my business of pulses. If you can earn Rs. 1 Lakh per month, then why did you take a loan of Rs. 7 Lakhs? There was some necessity.

I paid back the amount of Rs. 7 Lakhs in July 2017. I do not remember the date. It may be wrongly mentioned in my written statement that the amount was returned in the first week of June, 2017. No receipt was taken from the plaintiff when I returned the money. Vol. No receipt is used to be issued. There is the return back of the letter issued only. At that time I was living in Shalimar Bagh. My business is at Naya Bazar. I do not remember whether or not I know any person with the name of Rajender Kumar. I know Moti Lal because he used to come to our place of business on account of his business of truck freight. Today I do not remember whether or not I had taken any loan earlier to this loan from Moti Lal. I used to take loan from other persons also in my business. In case if the loan amount is taken through cheque etc., then only I used to show them in Income Tax Return otherwise not. It is wrong to suggest that I had not returned Rs. 7 Lakhs to the plaintiff. It is wrong to suggest that I am deposing falsely."

25. It emerges from the admissions in cross-examination of DW-1 that a Receipt dated 02.06.2017 was executed at the time of taking loan, but pertinently, no document was executed except a bald assertion. Significantly, DW-1 was unable to give the exact date of return of money; except an omnibus assertion that it was returned in July, 2017. It is highly unbelievable and improbable that while the Receipt of loan is prepared, there would be no document in the acknowledgement of its return.

26. Aside from the vagueness of the return, another aspect of importance is that the loan was claimed to have been returned in one instance, and that



too, in cash. There is no explanation of the source of arranging this amount, which is a huge amount.

27. Another factor which raises a doubt about the defence of the Appellant, is that the loan was taken in June, 2017 and allegedly returned in a month, i.e. in July, 2017. It became even more imperative to explain the source from where the amount was arranged, to return the loan.

28. The Defendant claimed that the loan was returned by him, in the presence of his wife. This makes it imperative to consider the testimony of his wife, *Smt. Raj, DW-2*. Her cross-examination also makes some interesting revelations. She stated, *inter alia*:

“...I am not aware whether my husband took a loan of Rs.7.0 Lakh from the plaintiff. It is correct that my husband has completely paid the loan amount of Rs.7.0 Lakh to the plaintiff at property bearing No. BH - 28 A, East Shalimar Bagh, Delhi. It is correct that the said loan amount was not paid to the plaintiff in my presence. No other person except me was present at the time when I handed over the amount of Rs.7.0 Lakh to my husband in the month of July, 2017 but I do not remember the exact date. The aforesaid loan amount was given in cash. I cannot say what was the denomination of currency amount. I had not counted the said amount which I handed over to my husband.”

29. According to DW-2, no other person was present, at the time of alleged return of money. Pertinently, she was the one who gave the cash to her husband to be returned to the Plaintiff, but she was not able to give the denomination of the Notes. Not only this, she did not count the money before giving it to the husband. This itself reflects that in fact, there was no money ever returned to the Plaintiff.

30. Further, the Plaintiff claimed that only part amount in the sum of Rs.3,00,000/- remained to be returned; the failure of the Defendant to prove



2026:DHC:2103



otherwise, entitles the Plaintiff/Appellant to the Decree of Rs 3,00,000/- towards the Principal amount and interest @ 12% per annum, amounting to Rs.1,90,000/-.

31. As regards the observation of the Ld. Trial Court concerning large cash transactions, it is pertinent to mention that the *Plaintiff/Appellant* and the *Defendant/Respondent* may be in violation of the provisions of the Income Tax Authorities, which may attract penalty under the Income-tax Act, but the transaction, though in cash, is proved in this Civil Suit, and cannot be disregarded.

32. For the reasons stated hereinabove, the Defendant has miserably failed to discharge the onus to prove that he had re-paid the entire loan. The Impugned Judgment and Decree dated 22.11.2024, is therefore, set aside.

33. The Suit is decreed in favour of the Appellant and against the Respondent for a sum of **Rs.4,90,000/-** along with interest @ **6%** per annum, from the date of filing of the suit till the date of realization of the decretal amount and costs. Decree sheet be drawn accordingly.

34. The Appeal is **allowed**. Pending Application(s) if any, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 13, 2026
RS