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

\+ RFA 861/2023, CM APPL. 54667/2023

SH. AMIT VERMA
S/o Sh. Albel Singh
R/o House no. 83, Dani Mohalla
Village Jonapur, New Delhi. .....Appellant

Through: Mr. Keshav V Hegde, Mr. Mohinder Kumar Kukreja and Ms. Prerna Dayal, Advocates

versus

SH. EDWARD BARUA @ EDWARD BARWA
S/o Mr. Placidius Barwa,
R/o Village Bendora, P.S. Chainpur,
Distt. Gumla, Jharkhand. .....Respondent

Through: Counsel for Respondent (appearance not given)

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **15.04.2026**

1. The present Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 *(hereinafter referred to as "CPC")* has been filed by the Appellant/Defendant assailing the Judgment and Decree dated 26.05.2023, whereby the learned Additional District Judge has decreed the Suit of the Plaintiff for a sum of Rs.5,000,000/- along with simple interest @ 6% per annum from 21.05.2014 till the filing of the Suit, and further future interest @ 9% per annum from the date of filing of Suit till its realisation.

2. The Plaintiff/Respondent had instituted a *Suit bearing CS No. 468/2017 against the Defendant/Appellant for recovery of Rs.6,65,000/-*

along with interest.

3. The ***brief facts,*** as set out in the Plaint, are that a Suit had been filed by the Defendant/Appellant for *Permanent Injunction* against the Plaintiff/Respondent claiming to be the owner in possession of the property bearing no. A-55/1, measuring 100 sq. yards, situated in Khasra No. 1680, Phase-I, Aaya Nagar, New Delhi (*hereinafter referred to as the "Suit Property"*)

4. In the said proceedings, the Plaintiff/Respondent herein filed his *Written Statement along with a Counter-Claim* asserting his ownership over a larger parcel of land, admeasuring 350 sq. yards out of Khasra No. 1680, Aaya Nagar, New Delhi, which he claimed to have purchased from Sh. Dharamvir s/o Sh. Udhmi Ram by way of GPA, Agreement to Sell, Affidavit and Receipt, all dated 16.10.1985.

5. During the pendency of the aforesaid Suit, the parties arrived at a settlement, pursuant to which the Plaintiff/Respondent agreed to sell the Suit Property to the Defendant/Appellant *vide* documents including a GPA, Agreement to Sell, Affidavit, Will, Receipt and Possession Letter, all dated 27.04.2014, for a total sale consideration of **Rs. 63,50,000/-**.

6. Pursuant to the settlement between the parties, the Defendant/Appellant purchased the Suit Property and paid the agreed sale consideration to the Plaintiff/Respondent, by way of eleven cheques. Out of the said eleven cheques, ten were honoured upon presentation, whereas one cheque dated 21.05.2014 for a sum of ₹5,00,000/-, drawn on Syndicate Bank, Air Force Station, Arjun Nagar, New Delhi, issued by the Defendant/Appellant in favour of the Plaintiff towards part of the sale consideration, remained unpaid.

7. The Plaintiff/Respondent alleged that he did not present the said cheque for encashment on account of the assurance given by the Defendant/Appellant that the said amount would be paid in cash, in *lieu* thereof. However, despite repeated requests and demands, the Defendant/Appellant failed to pay the alleged outstanding amount of **Rs. 5,00,000/-**.

8. The Plaintiff/Respondent, thus instituted the present Suit seeking recovery of Rs. 5,00,000/- along with interest @ 12% per annum from 21.05.2014 to 20.02.2017 amounting to Rs. 1,65,000/-, aggregating to Rs. 6,65,000/**-,** along with *pendent lite* and future interest @ 12% p.a.

9. The ***Defendant/Appellant*** in his written statement *inter alia*, took a preliminary objection that the present Suit was *devoid of any cause of action.* It was contended that the Defendant/Appellant had already made payment in cash in *lieu* of the said cheque, but the cheque had been misused by Plaintiff/Respondent, who had failed to return the cheque on the pretext that it had been lost.

10. It was additionally alleged that the Plaintiff/Respondent had acted fraudulently by executing documents reflecting incorrect measurements of the Suit Property.

11. **On merits**, all averments made in the Plaint were denied, and it was reiterated that payment in cash against the aforesaid cheque, had already been duly made.

12. ***The Plaintiff/Respondent, in the Replication***, reaffirmed the assertions made in the Plaint and categorically denied that any amount had been paid to him in cash.

13. The learned ADJ framed ***the issues on 01.02.2018***, as under:-

"1. Whether the plaintiff is entitled to recover a sum of Rs.6,65,000/-(Rupees Six Lac Sixty Five Thousand only) from the defendant as prayed for? OPP
2. If issue no. 1 is decided in affirmative, whether the plaintiff is entitled to interest on such sum? If yes, at what rate and for which period? OPP
3. Whether no cause of action has arisen in favour of the plaintiff and against the defendant? OPP
4. Whether this suit is barred by period of limitation? OPP
5. Relief."

14. The Plaintiff/Respondent examined himself as **PW-1** and tendered his evidence by way of affidavit **Ex. PW-1/A**. He relied upon documents including the GPA dated 27.04.2014 **Ex. PW-1/1**, Agreement to Sell dated 27.04.2014 **Ex. PW-1/2**, Affidavit **Ex. PW-1/3**, Will **Ex. PW-1/4**, Possession Letter **Ex. PW-1/5**, Receipt **Ex. PW-1/6**, cheque bearing no. 367124 dated 21.05.2014 **Ex. PW-1/7** and passbook **Ex. PW-1/8**.

15. The Defendant/Appellant examined himself as **DW-1** and tendered his evidence by way of affidavit **Ex. DW-1/A**. He reiterated his defence as stated in the Written Statement.

16. The ***learned Additional District Judge***, upon appreciation of the evidence on record, held that the Defendant/Appellant had failed to prove that he had made the payment of Rs. 5,00,000/- in cash against the cheque dated 21.05.2014, . The defence of cash payment and alleged misuse of the cheque was disbelieved, *inter alia*, on the ground that no documentary evidence or complaint had been produced, by the Defendant/Appellant.

17. Accordingly, **the Suit was decreed** in favour of the Plaintiff/Respondent for a sum of Rs. 5,00,000/- along with simple interest

@ 6% per annum from 21.05.2014 till the filing of the Suit and future interest @ 9% per annum till realisation.

18. Aggrieved by the said Judgment and Decree, the **present First Regular Appeal** has been preferred.

19. ***The grounds of challenge*** are that the impugned Judgment is contrary to the evidence on record and suffers from perversity. The Plaintiff/Respondent, in the Plaint, had claimed that ten cheques were encashed by him, however, in his cross-examination, he stated that six cheques had been encashed for a total sum of Rs.34,50,000/-, thereby giving rise to material inconsistencies.

20. The Plaintiff/Respondent further admitted in his cross-examination that he had received Rs.29,00,000/- in cash, thereby indicating that he had received the entire sale consideration of Rs.63,50,000/-. However, he immediately qualified his admission by asserting that he had received Rs.25,00,000/- in cash.

21. It is contended that a harmonious reading of the averments made in the Plaint and the deposition of the Plaintiff/Respondent demonstrates that no subsisting liability remained against the Defendant/Appellant and that the cheque in question, has been misused.

22. It is further contended that the learned Trial Court failed to appreciate that the documents relied upon by the Plaintiff/Respondent, including the Agreement to Sell and Power of Attorney, being unstamped and/or insufficiently stamped, could not have been admitted in evidence in view of Section 35 of the Indian Stamp Act, 1899.

23. In view of the aforesaid, it is respectfully prayed that the impugned Judgment and Decree be set aside.

24. In the ***Written Submissions*** filed in the present Appeal, the Appellant has reiterated the grounds urged in the Appeal.

25. Per contra, in the ***Written Submissions***, the Respondent has opposed the Appeal on the ground that it is based on false and frivolous pleas and seeks to raise new defences, which were never taken before the learned Trial Court and are, therefore, impermissible in law.

26. It is submitted that there are no material contradictions in the testimony of the Respondent, who had consistently maintained that all cheques were either encashed or paid in cash, except the cheque in question. The Respondent had produced bank records and receipts in support of his case, whereas the Appellant failed to produce any document to evidence payment in cash or to substantiate the allegation of misuse of cheque.

27. The Respondent has further contended that the objection regarding reliance on unstamped or unregistered documents is untenable, as the said plea was never raised before the learned Trial Court and no issue was framed in that regard. It is submitted that the transaction and possession of the Suit Property are admitted, and the dispute is confined only to the non-payment of the cheque amount.

28. It is thus, submitted that the Appellant has taken inconsistent stands regarding the mode of payment and has failed to establish his defence. The learned Trial Court has rightly appreciated the evidence on record and decreed the Suit, and the present Appeal is liable to be dismissed.

Submissions heard and record perused.

29. It is an ***admitted case*** that the Plaintiff had entered into an Agreement to Sell with the Defendant in respect of the Suit Property for a total sale consideration of Rs.63,50,000/-. The Plaintiff had asserted that eleven

cheques were issued in his favour towards the payment of the sale consideration. He further asserted that only one cheque bearing no. 367124 dated 21.05.2014 for a sum of Rs. 5,00,000/-, towards the balance sale consideration was payable by the Defendant. The cheque was not presented for encashment, on the request of the Appellant.

30. The Defendant, however, took the consistent stand that the entire amount stands paid. It has been contended by the learned Counsel for the Appellant that only six cheques aggregating to Rs. 34,50,000/- were encashed, while the remaining cheques were returned and corresponding payments were made in cash, which finds partial support from the Plaintiff's own cross-examination wherein he admitted receipt of Rs. 29,00,000 in cash, though, he immediately qualified his statement by stating that only Rs.24,00,000/- was received by him.

31. The core issue that arises for consideration is whether a sum of Rs. 5,00,000/- had been paid by the Defendant/Appellant in cash against the said cheque or whether the said amount remained outstanding to be paid by the Defendant/Appellant.

32. In this regard, the learned Trial Court referred to two receipts **Ex. PW-1/D1 (colly),** which evidenced cash payments made against certain cheques. However, no receipt or documentary evidence was produced by the Defendant to establish payment of Rs. 5,00,000/-, against the cheque in question.

33. The learned Trial Court observed that whenever payments were made in cash *in lieu* of cheques, receipts were obtained. In such circumstances, the burden lay upon the Defendant to establish that payment of Rs. 5,00,000/- had been made and that no amount remained due. In the absence of any

cogent evidence, the Defendant failed to discharge this burden.

34. The Appellant has sought to build his entire defence on a suggestion put to the Plaintiff during cross-examination that the balance sum of Rs.29,00,000/- had been received in cash. However, although the Plaintiff initially admitted having received the said amount, but he immediately qualified his response by stating that only Rs.24,00,000/- had, in fact, been received in cash. His cross-examination, reads thus:

> *"As per my bank statement, six cheques have been encashed for a total sum of Rs.34,50,000/-. **I had received Rs.29,00,000/- in cash from the defendant. Again said, I had received in cash Rs.24,00,000/- from the defendant.**"*

35. A person of ordinary prudence, who had received the entire sale consideration, would not approach the Court seeking recovery of an amount not due. The Plaintiff admitted receipt of Rs. 24,00,000/- in cash, even though no corresponding receipts, except two receipts for Rs. 10,00,00/-, have been produced by the Appellant. Had the Plaintiff harboured any dishonest intention, he could have denied the cash payments altogether, which is not the case.

36. The contention regarding inadmissibility of unstamped or unregistered documents does not have any merit, as the transaction between the parties and execution of documents stands admitted, and no such objection was raised at the stage of trial.

37. There was, therefore, a shortfall of only Rs.5,00,000/- in the payment of sale consideration, which has been earnestly claimed by the Plaintiff/Respondent.

38. In this context, it may also be observed that when cash payments are

made, it is the responsibility of the person making such payments to retain proof thereof by way of receipts or other documentary evidence, which the Defendant has done only partially.

39. The learned ADJ, therefore, rightly accepted the testimony of the Plaintiff and concluded that a balance amount of Rs.5,00,000/- had not been paid by the Defendant, and the Suit was accordingly, decreed.

40. ***There is no merit in the present Appeal, which is hereby dismissed***.

41. The pending Applications, if any, also stands disposed of.

NEENA BANSAL KRISHNA, J

APRIL 15, 2026

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