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

\+ RSA 215/2025, CM APPL. 80646/2025

CM APPL. 80647/2025, CM APPL. 80648/2025

CM APPL. 80649/2025

BILTU MANDAL

.....Appellant

Through: Mr. Kumar Ravishankar, Mr. Raghav Alok, Mr. Yash Gupta and Ms. Bhawna Singh, Advocates.

versus

UTTAM KUMAR DEY

.....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **09.01.2026**

1. Regular Second Appeal under Section 100 of the CPC has been filed on behalf of the Appellant, to challenge the Judgment dated 23.12.2024 of the learned District Judge, which upheld the Judgment and Decree dated 26.08.2023 of learned Civil Judge decreeing the Suit for Recovery of Rs.2,20,000/- along with interest.

2. It was submitted in the Plaint that the Plaintiff and Defendant/Appellant had good relationship. In the end of October, 2016 on the request of Defendant, Plaintiff could arrange Rs.1,80,000/- which he paid to the Defendant on an undertaking by him that he would return the money in four monthly instalments. Thereafter, the Appellant again approached him in the month of November, 2016 to pay another sum of

Rs.40,000/- and he undertook to repay the entire amount of Rs.2,20,000/- by the end of March, 2017. However, the Defendant failed to pay the loan amount. He then issued a *Cheque bearing No.137946 dated 17.03.2017 of Rs.2,20,000/- drawn on Central Bank of India, New Delhi,* which on presentation in Corporation Bank, Sushant Lok, Gurgaon on 18.03.2017 was returned unpaid for "*funds insufficient*". On the assurance of the Appellant, the Plaintiff again presented the Cheque on 02.06.2017, but it was again dishonoured *vide* Return Memo dated 03.06.2017 with the remarks "*funds insufficient*". The Plaintiff sought the money, but the Defendant failed to pay.

3. Consequently, the Suit for Recovery of Rs.2,20,000/- along with pendente lite and future interest @ 12% per annum was filed.

4. The Appellant in his **Written Statement** took the preliminary objection that he had given a sum of Rs.50,000/- to the Plaintiff and the Suit has been filed only to dissuade the Appellant from claiming his Rs.50,000/-. It was denied that he had ever taken a loan of Rs.2,20,000/- and further asserted that no Legal Notice for recovery had ever been served upon him.

5. The Defendant explained that he had friendly relationship with the Respondent through Latif Sukhdev Alam and the Plaintiff induced the Appellant to invest the money for purchase of land of which they would have been the beneficiary. Consequently, because of the friendly relationship, Defendant had given Rs.50,000/- to the Plaintiff on an assurance that the money would be returned after two months. Appellant met the Plaintiff and sought the return of his money, but he avoided on one pretext or the other. Again, in March, 2019 Defendant demanded the money, but the Plaintiff refused to return.

6. **On merits**, it has been denied that he had taken a loan of Rs.2,20,000/- as claimed by the Plaintiff. He further explained that on persistent requests of the Plaintiff, the Defendant on 17.03.2017 issued Cheque No.137946 for Rs.2,20,000/- drawn on Central Bank of India, South Extension Branch, New Delhi *towards the repayment of the entire loan amount.* It is denied that the Cheque on presentation was dishonoured with the remarks "*funds insufficient*". It was denied that the Cheque had been issued for any legally enforceable liability. It was thus, submitted that the Suit be dismissed.

7. The Plaintiff in the **Replication** reiterated his claim.

8. The **Plaintiff examined himself as PW1** and deposed about the contents of the Suit and reiterated that he had given a loan of Rs.2,20,000/- for which a cheque dated 17.03.2017 was issued by the Defendant, which on presentation got dishonoured.

9. **PW2 Uttam Sanapoti** was a witness to the loan of Rs.2,20,000/- being given by the Plaintiff to the Defendant in his presence in two instalments of Rs.1,80,000/- and Rs.40,000/-. He also was a witness to the cheque given by the Defendant, when he was approached by the Plaintiff along with Latif Sukhdev Alam for return of loan amount.

10. **PW3 Latif Sukhdev Alam** also corroborated the testimony of PW2. He denied that there was transaction between him and the Defendant. He admitted that the case under Section 138 NI Act was filed by him against Defendant, which got settled. He further deposed that he had taken only one cheque from the Appellant which had his signatures. He denied having taken three cheques or having given one cheque to the Plaintiff.

11. The **Defendant/appellant in his testimony examined himself as**

DW1 and denied having taken any loan from the Plaintiff/ Respondent. He explained that Plaintiff was known to Latif Sukhdev Alam through whom he came to know the Plaintiff. He was induced to invest money for purchase of land by the Plaintiff. He helped the Plainiff by given him Rs.50,000/- on an assurance that this money would be returned to him, which was never returned. He demanded his money several times himself and through his friends, but the Plaintiff failed to return the money. Because the Plaintiff did not want to return the money, he threatened to lodge a Complaint in case the Defendant made a demand for the money again.

12. The Defendant denied having issued any cheques to the Plaintiff. He asserted that three blank cheques were taken by Latif Sukhdev Alam and one of them has been taken by the Plaintiff, which has been misused. The Suit has been filed by the Plaintiff only to dissuade the Defendant from seeking his legitimate money.

13. The **learned Civil Judge vide the Judgment dated 26.08.2023** considered the evidence led by the parties and **decreed the Suit** of the Plaintiff/Respondent in the sum of Rs.2,20,000/- along with interest 6% per annum from the date of institution of Suit till realization of the amount.

14. Appeal *vide* **RCA DJ28/2024** was filed by the Appellant, before the learned District Judge, which was dismissed *vide* Judgment dated 23.12.2024.

15. Aggrieved by the said Decree of the Suit against the Appellant, the present Appeal has been filed.

16. The ***main grounds of challenge*** are that the learned Appellate Court has wrongly relied upon the presumption under Section 139 NI Act which is not applicable to the Civil Recovery Suit. Furthermore, the presumption is

rebuttable. The Appellant had taken the specific plea that blank cheques had been taken by the Plaintiff which were misused and that no money was actually advanced, raised triable issues. The burden of proof has been wrongly put on the Appellant only to establish the cash loan especially in view of the disputed facts. The alleged cash transaction of Rs.40,000/- is alleged to have been taken place on 15.11.2016 during post demonetization currency restrictions.

17. The Respondent/Plaintiff was a salaried driver with an income of Rs.17,000/- per month. No credible explanation has been given about the source of cash in his hand. Reliance is placed on *Basalingappa vs. Mudibassapa* (2019) 5 SCC 418.

18. The Appellant has further contended that the deposition of PW2 and PW3 are inconsistent and do not support the testimony of the Plaintiff. PW3 Latif Sukhdev Alam admitted past cheque litigation with the Defendant and has made contradictory statrments regarding his role, casting a serious doubt about the claim of the Plaintiff/Respondent. The contradictions were not minor, but raised issued of collusion and credibility.

19. It has not been appreciated that there is no documentation of the alleged loan by way of receipt, Agreement or written acknowledgment of the loan produced by the Respondent, even though there was a huge amount involved. The oral evidence of loan has been erroneously held to be sufficient contrary in this regard to Section 101/102 Evidence Act. There were several material questions of fact and law like misjoinder, non-joinder of Latif Sukhdev Alam, absence of Legal Notice and date of the cheque which had been given as a security.

20. It is, therefore, submitted that the present Appeal be allowed and the

impugned Judgment of the learned Civil Judge which has been upheld by the learned District Judge, be set aside.

Submissions heard and record perused.

21. The Plaintiff/Respondent had filed a Suit for Recovery asserting that he had given a loan of Rs.2,20,000/- to the Appellant which was to be repaid by the end of March, 2017. The defendant had admittedly issued a Cheque dated 17.03.2017 in the sum of Rs.2,20,000/- which on presentation got dishonoured due to "*funds sufficient*". The learned Civil Judge rightly observed that once the cheque had been issued admittedly by the Appellant, the onus was on him to explain why the impugned Cheque had been given by him.

22. The Appellant had taken the defence that he had given three blank cheques to Latif Sukhdev Alam, but has failed to give the reasons for having given the three blank cheques to him. Pertinently, Latif Sukhdev Alam appeared as PW3 and asserted that one cheque only was given to him by the Defendant in respect of which litigation under Section 138 NI Act was initiated by him, but the matter got settled with the Defendant.

23. If the contention of the Appellant is to be accepted and there were three blank cheques which were handed over to Latif Sukhdev Alam, there was no reason for Latif Sukhdev Alam to have handed over one cheque to the Plaintiff, as claimed by the Defendant. Pertinently, there is no cogent evidence in this regard.

24. The Appellant has further contended that the cheque had been given **as security,** but was misused. However, he has failed to explain the reason for having given allegedly three blank cheques to Latif Sukhdev Alam as security. The defence taken by the appellant was, therefore, not tenable and

had been rightly rejected by the learned Trial Court.

25. The Appellant in his testimony as DW1, was also not able to explain why the Cheque had been given to the Plaintiff. It has been rightly held that once a cheque is given, the onus is on the Defendant to explain why such cheque was given.

26. The learned Trial Court has rightly disbelieved the defence taken by the Appellant and Decreed the Suit *vide* Judgment dated 26.08.2023 which has been rightly upheld by the learned District Judge *vide* Judgment dated 23.12.2024.

27. In the end, it may also be observed that this is a second Appeal and the challenge is only to the facts and no substantive question of law was raised.

28. There is no merit in the Appeal, which is hereby **dismissed**. Pending Applications are disposed of accordingly.

NEENA BANSAL KRISHNA, J

JANUARY 9, 2026/va