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

\+ RFA 1188/2025, CM APPL. 82301/2025, CM APPL. 82302/2025 & CM APPL. 82303/2025

ANJU & ORS. .....Appellants

Through: Mr. Joby P Varghese and Ms. Rashi, Advocates

versus

MAHESH PANWAR .....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **20.01.2026**

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC') has been filed to challenge the Judgment dated 08.10.2025 which has decreed the Suit for recovery against the Appellant in the sum of Rs.5 lacs along with interest @ 6% p.a. from the date of filing of the Suit till the actual realization.

2. The **brief facts** are that the Plaintiff was the uncle of Rakesh Panwar, deceased husband of Appellant No. 1 and father of Defendants No. 2 and 3, and had cordial relationship with the deceased. On the request of Rakesh Panwar, the Respondent/Plaintiff agreed to advance a friendly loan of Rs.5 lacs out of which, Rs.4,87,500/- has been given through Cheque No. 000030 dated 26.05.2016 and Rs.12,500/- in cash. The deceased Rakesh Panwar, in order to secure the repayment, had issued a post dated cheque bearing No. 929629 dated 09.03.2017 for Rs.5 lacs drawn on Delhi State Cooperative

Bank Limited on Account No. 006005001642 in favor of the Plaintiff. It was assured that the cheque on presentation shall be honored.

3. The Plaintiff further asserted that that the loan amount was not repaid. The cheque on presentation was dishonored and returned with the remarks "*funds insufficient*" *vide* Return Memo dated 16.03.2017. It is further submitted that Rakesh Panwar died in October, 2016 and Defendants who were the legal heirs of Rakesh Panwar, were sued for recovery of the loan amount of Rs.5 lacs and interest.

4. The ***Suit was contested by the Defendants (Appellants),*** who took a preliminary objection that a false and frivolous Suit has been filed which is not maintainable in the eyes of law. All the averments made in the Plaint were denied. It was admitted that Rakesh Panwar had died in the month of October, 2016. It was asserted that the alleged friendly loan was not within the knowledge of the Defendants. In May, 2016, there was no financial urgency of deceased Rakesh Panwar which would have necessitated his borrowing of Rs.5 lacs.

5. It was further asserted that the Plaintiff has failed to mention the specific date on which the alleged post-dated cheque was issued to Rakesh Panwar. Moreover, the alleged cheque was not filled in the handwriting of the deceased and the same has been fabricated and manipulated against the Defendants. Moreover, the Plaintiff has presented the alleged cheque only on 14.03.2017, i.e. after several months of demise of Rakesh Panwar. No Complaint under Section 138 NI Act was initiated, which further shows that this cheque is a manipulated document.

6. On the basis of the pleadings, the following issues were framed on 24.01.2019:

1. *Whether the plaintiff is entitled to decree for recovery of Rs.5,00,000/- as prayed for? OPP*
2. *Whether the plaintiff is entitled to any interest? If yes, at what rate and for which period? OPP*
3. *Whether the cheque in question is forged? OPD*
4. *Relief.*

7. The Plaintiff/Respondent examined himself as PW1 and PW2 Ram Kumar, Assistant Manager, Delhi State Cooperative Bank Limited to prove the requisite documents.

8. The Appellant Defendant No. 1 Ms. Anju examined herself as DW1 and reaffirmed her defense as taken in the Written Statement.

9. The learned Trial Court considered the evidence and concluded that the Plaintiff/Respondent has successfully proved the loan of Rs.5 lacs extended to late Rakesh Panwar. Consequently, the Suit of the Plaintiff for Rs.5 lacs along with interest @ 6% was decreed.

10. ***The grounds of challenge*** as raised in the present Appeal are that even though Rakesh Panwar died in October, 2016, the cheque was presented only on 09.03.2017. A person who is not alive, could not possibly have issued and sign the cheque and this impossibility strikes at the root of the case of the Plaintiff. It reflects that the cheque is nothing but a fabricated and manipulated document.

11. It has not been considered that a loan transaction was split into Rs.4,87,500/- given through cheque and Rs.12,500/- in cash. The manner of payment is suspicious and does not reflect ordinary conduct. It has not been considered that the alleged transfer of Rs.4,87,500/- is not reflected in the bank account of the deceased. No evidence has been produced to show that this cheque was ever encashed or credited to the bank account of deceased

husband. The Plaintiff summoned the statement of the deceased's bank from December, 2016 onwards, which is months after the alleged transaction. Mere mentioning of a cheque number does not amount to proof of payment in the eyes of law. The Plaintiff, therefore, failed to prove that he had given the loan of Rs.5 lacs as claimed by him.

12. Furthermore, the learned Trial Court has wrongly invoked the presumption under Sections 118 and 139 NI Act, even though the Plaintiff never proved the essential fact that the cheque was actually executed by the deceased. In fact, he has admitted in his cross-examination that he never saw the cheque being signed and that he could not even confirm whether the signatures are original.

13. The Suit was filed by the Plaintiff not only against Defendant No. 1 (wife of the deceased) but also against minor children, i.e. Defendants No. 2 and 3 without recording any proper representation of the minors, thereby vitiating the entire proceedings. The Decree has been passed by the learned Trial Court in a singular manner without considering the liability of the minors or their inheritance, and the Decree is not sustainable in law.

14. The learned Trial Court has wrongly held that the loan of Rs.5 lacs was advanced to late Rakesh Panwar, despite the absence of any contemporaneous documentary evidence, acknowledgement or independent witness to the transaction. The issue regarding the validity of cheque, inheritance of estate and liability of minors has not been properly considered and adjudicated. Compliance of Order XXXII CPC regarding the appointment of guardian and litigation against minor Defendants has not been considered.

15. *The impugned judgment, therefore, suffers from various infirmities and is liable to be set aside.*

Submissions Heard and Record Perused.

16. The Suit for Recovery in the sum of Rs.5,00,000/- along with the interest @6% p.a. was filed by the Respondent, Mahesh Panwar. The first ***challenge*** taken in the Appeal by the Appellants/Defendants is that there is no evidence whatsoever of the loan amount of Rs.5,00,000/- having been given to Mr. Rakesh Kumar, deceased of whom the Appellants are the legal heirs. It was the case of the Respondent that he had given a sum of Rs.4,87,500/- through Cheque No.000030 dated 26.05.2016. To corroborate this, the Plaintiff had exhibited his Pass Book, Ex.PW-1/6, which clearly reflected that *vide* this Cheque, a sum of Rs.4,87,500/- was withdrawn by him. The Plaintiff had further deposed that the balance amount of Rs.12,500/- was given in cash. The plaintiff has thus, explained the source from where the money was arranged by him.

17. Further, to secure this loan amount taken by Late Rakesh Kumar, he had issued a post-dated cheque dated 09.03.2017 for Rs.5,00,000/- which, on presentation was dishonored. The Appellant has contended that it is a post-dated cheque, which has been presented after the demise of Mr. Rakesh Kumar, in October, 2016. The contention raised by the Appellants, is correct to some extent that this cheque could not have been presented after the demise of Mr. Rakesh Kumar. However, there are two significant aspects which emerge; ***firstly*** that the cheque on presentation was dishonored for '*insufficiency of funds'* and there is no explanation why the Account was still functioning even though Mr. Rakesh Kumar had died.

18. The ***second aspect*** is that the cheque could not have been honored

after the demise of Mr. Rakesh Kumar, but this cheque is a testimony and corroboration of the averments of the Respondent that a loan of Rs.5,00,000/- was given to Late Mr. Rakesh Kumar. There is no other explanation forthcoming as to why this cheque was given by Late Mr. Rakesh Kumar to the Respondent.

19. In this context, it is pertinent to refer to the testimony of the Appellant/Anju Panwar, who had appeared as DW-1. She had claimed that there was no occasion for her husband to have taken a friendly loan of Rs.5,00,000/- as there was neither any marriage nor any function scheduled in the family. However, this argument is not tenable for the simple reason that the cheque was a testimony to the loan amount taken by the deceased/husband.

20. It was further claimed by her that the impugned Cheque did not bear the signatures of her husband, but the cheque on presentation, was dishonoured not on account of mismatch of signatures, but on account of '*insufficiency of funds'*. This contention raised on behalf of the Respondent/Appellant is, therefore, not tenable.

21. Furthermore, the consistent stand of the Appellant was that she was never informed by her husband that he was in any kind of financial need or had taken the loan of Rs.5,00,000/- from the Respondent. However, it has come on record that he committed suicide on account of financial difficulties.

22. During the course of the arguments, learned counsel for the Appellant had contended that there were various loans taken by the deceased, Mr. Rakesh Kumar and even a loan of more than Rs.9,00,000/- had been taken in the name of the Appellant, Anju Panwar and that all his terminal benefits

have been exhausted in settling those dues. The Appellant may not have been aware about the loan taken by her husband, but the cheque along with the attending circumstances clearly support the taking of loan of Rs.5,00,000/- from the Respondent.

23. The learned District Judge in the Impugned Judgment has, therefore, rightly concluded that not only the loan of Rs.5,00,000/- is proved to have been taken by Mr. Rakesh Kumar, the deceased husband of the Appellant, but also that the said loan amount was never returned by Late Mr. Rakesh Kumar and after his demise, by the Appellants.

24. The contention that the Appellants being the Legal heirs, are not liable for the debts of the deceased, is essentially a matter of execution, and the Appellants are at liberty to show that they have not inherited or left with the estate of the deceased, to satisfy his debts.

25. There is no infirmity in the Judgment of the learned District Judge.

26. The Appeal is, therefore, dismissed and disposed of accordingly.

27. The pending Applications, if any, also stand disposed of.

NEENA BANSAL KRISHNA, J

JANUARY 20, 2026
N/RS