



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-4807-2013

**Judgment Reserved on 19.08.2025
Judgement Pronounced on 26.08.2025**

BHARAT DHARIWAL

... APPELLANT

VERSUS

ASHOK KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sandeep K. Sharma, Advocate
for the appellant.

Mr. H.K. Aurora, Advocate
for the respondent.

PARMOD GOYAL, J.

Appellant has preferred Regular Second Appeal being aggrieved by dismissal of his suit for recovery of Rs. 4,68,000/-, on the basis of cheque No. 512545 dated 27.07.2010, drawn on Punjab National Bank issued by defendant-respondent, which got dishonoured along with future interest @ 12% per annum. Both the Courts below have dismissed claim raised by plaintiff-appellant vide impugned judgment and decree dated 06.04.2012 passed by the Court of Additional Civil Judge (Senior Division), Nakodar and judgment and decree dated 20.08.2012 passed by the Court of District Judge, Jalandhar.

2. Appellant had sought recovery of Rs. 4,50,000/- as principal amount along with Rs. 18,000/- interest over the same till date of filing of the suit on the ground that the said amount was given to defendant on loan and against said amount, a cheque bearing No. 512545 dated 27.07.2010 was issued by defendant,



which was dishonoured vide return memo dated 14.09.2010 on account of insufficient funds. Appellant had accordingly sought an amount of Rs. 4,68,000/- along with 12% future interest. Respondent, however, apart from taking number of preliminary objections on merit denied liability towards appellant and had denied having issued any cheque in favour of appellant against any loan liability as being asserted by appellant. He denied loan as well as issuance of cheque against loan and prayed for dismissal of suit.

3. From pleadings of parties following issues were framed:-

- “(1) Whether the plaintiff paid Rs. 450000/- to the defendant? OPP*
- (2) Whether the defendant issued cheque bearing no. 512545 dated 27.7.2010 to the plaintiff in discharge of legal liability? OPP.*
- (3) Whether the plaintiff approached and requested the defendant to make payment of the cheque amount? OPP.*
- (4) Whether the plaintiff is entitled to recover the suit amount alongwith interest? If so, at what rate to what extent and period? OPP*
- (5) Whether the suit of the plaintiff is maintainable? OPP.*
- (6) Whether the plaintiff has concealed true and material facts from the Court? OPD*
- (7) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.*
- (8) Relief.”*

4. Both the Courts below by way of concurrent finding of fact after going through evidence and contentions raised by parties have concluded issue Nos. 1, 2 and 4 against the appellant. Issue Nos. 6 and 7 were decided against the respondent as not pressed. Issue Nos. 3 and 5 were also decided against the appellant in view of finding on issue Nos. 1, 2 and 4.

5. Learned counsel for the appellant has challenged the impugned judgment and decree on the ground that both the Courts have erred in not accepting evidence of PW1 and PW2 bank officials who have duly proved that



cheque No. 512545 was duly presented by appellant with his banker which was sent to banker of respondent No. 1 and was dishonoured vide memo dated 14.09.2010 for insufficiency of funds.

6. Learned counsel for the appellant has further argued that learned Courts below have failed to take in consideration, presumption which arises under Section 118 of the Negotiable Instruments Act, 1881 that a cheque is always issued for consideration and if presumption under Section 118 of the Negotiable Instruments Act, 1881 as well as evidence of PW1 and PW2 regarding presentation and release of cheque is considered then the Courts below ought to have allowed suit for recovery preferred by appellant.

7. On consideration, I find the arguments raised on behalf of appellant to be attractive but are devoid of any merit. No doubt under Section 118 of the Negotiable Instruments Act, 1881, presumption regarding consideration do arises, however, the nature of consideration is not laid down under the provision of Section 118 of the Negotiable Instruments Act, 1881. Therefore, it was duty of appellant to prove that consideration for issuance of cheque was loan extended by appellant in favour of respondent. However, except for sole self serving evidence of plaintiff, there is no evidence which can help this Court to conclude that cheque of Rs.4,50,000/- as being claimed by appellant issued by respondent was against loan taken by him. Neither any date, time of taking loan by respondent has been pleaded by appellant nor has it been proved. No witness has been examined to corroborate transaction of loan.

8. In the absence of any evidence regarding loan, no conclusion can be drawn that cheque amount was only against transaction of loan, especially when original cheque has not been produced in evidence by the appellant. Appellant has not even proved that the same was lost by leading any cogent evidence. In the absence of original cheque and in the absence of any supporting evidence as



regards to transaction of loan, it cannot lead to conclusion that consideration for cheque was loan as being alleged by appellant. Presumption of consideration could have been possible, if loan was extended by respondent to appellant. However, in absence of evidence regarding loan, consideration can be love and affection or help extended by respondent. Since it was appellant who had to prove transaction of loan, it is appellant who shall fail in absence of any evidence regarding loan. The contention on behalf of appellant that Courts below ought to have raised presumption under Section 118 of the Negotiable Instruments Act, 1881 is, therefore, without any merit. Even by raising presumption under Section 118 of the Negotiable Instruments Act, 1881, no conclusion regarding loan to be consideration against cheque can be arrived at.

9. Similarly, both the Courts below have duly noticed that appellant has failed to adduce original cheque in evidence and to show in what circumstances, it was lost. Appellant has also failed to lead any evidence regarding circumstances, in which loan was given by him to respondent as alleged. The evidence of PW1 and PW 2, the bank officials regarding submission of cheque by appellant and its dishonour by respondent's bank would not raise any presumption in favour of appellant that the cheque was issued against loan amount. Two factors are required to be noticed which leads to conclusion that evidence of PW1 and PW2 is of no help to the case of the appellant (1) that appellant has failed to prove transaction of loan as alleged by him and (2) that appellant has failed to prove original dishonoured cheque which was allegedly handed over to him by his banker on record and explain circumstances, in which it was lost. As per PW2 cheque book to respondent was issued on 22.10.2002 and cheque out of said cheque book was dishonoured on 14.09.2010. Suit was filed on 03.12.2010 and it is not explained as to how cheque got lost. It is pertinent to note that appellant had never raised any grievance against dishonour of cheque. The appellant had not



issued any notice for dishonour of cheque or has not taken any legal action to prosecute the respondent for alleged dishonour of cheque. Merely on the basis that a cheque was issued by respondent, which was dishonoured, it cannot be concluded that same was against liability of loan and, therefore, both the Courts have rightly rejected the claim of appellant as appellant has failed to prove his case.

10. The concurrent finding of facts recorded by both the Courts below cannot be faulted with. Both the Courts have come to the right conclusion after appreciation of evidence as well as contentions raised by parties. No ground for interference in present Regular Second Appeal is made out. No substantial question of law arises in present appeal.

11. Accordingly, present appeal is dismissed. Parties to bear their own costs.

26.08.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No