

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****223****RSA-4683-2019 (O&M)****Date of decision: 12.09.2025****Ram Kishan Birbian****...Appellant(s)****Vs.****Rambir Singh Toor****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ram Kishan Birbian, appellant in person.

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**NIDHI GUPTA, J.**

Present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellant for recovery of Rs.10,85,000/-, has been dismissed with costs by both the Courts below.

2. It is *inter alia* submitted by the appellant that the present appellant and defendant are related to each other being brothers-in-law/Sadu. Defendant was in need of financial assistance from time to time. Accordingly, plaintiff had advanced a loan of Rs.5,75,500/- in instalments by way of cheque and cash during the period of June 2004 to January 2005. Defendant had agreed to compensate the plaintiff by way of interest @ 13.25% on the said amount. Accordingly, defendant had issued a post-dated cheque No. 133928 dated 02.09.2006 for Rs.7,05,000/- being the principal loan amount and interest calculated upto 02.09.2006. Defendant had assured the plaintiff that the same will be



encashed upon presentation. It is submitted that however in the last week of August 2006, plaintiff had received a telephonic call from wife of the defendant that plaintiff should not present the cheque for another 5 months as the defendant had issued more cheques to other people. Accordingly, plaintiff had agreed to the above request and did not present the cheque. The plaintiff waited for 5 months and presented the cheque in the first week of February 2007. However, the said cheque remained uncashed with the memo of Bank to the effect that "*Payment stopped by Drawer.*" Accordingly, plaintiff had served a legal notice under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "NI Act") calling upon the defendant to pay the amount but to no avail. Accordingly, plaintiff was forced to file a complaint under Section 138 of NI Act in which defendant was summoned and was then released on bail. Thus, defendant was liable to pay total sum of Rs.10,85,000/- including principal and interest upto date of filing the suit on 19.08.2009. It was further pleaded that complaint under Section 138 of NI Act is still pending before the Id. Chief Judicial Magistrate, Chandigarh. The appellant further submits that by way of clear, cogent and comprehensive evidence, the plaintiff has duly established on record that the said payments had been made to the defendant. However, both the Courts below have failed to appreciate the statement of PW4 i.e. Manager, LIC Housing Finance Ltd., Chandigarh, who has stated on oath that, that amount of Rs.3 lacs was sanctioned on 27.10.2001 and Rs.1 lac on 10.01.2002 on written request of the appellant.



3. It is further submitted by the appellant that both the Courts below have not taken into consideration that respondent/defendant has intentionally withheld the relevant documentary evidence ie. counter-foil of cheque book in question, passport and bill dated 21.06.2004 of "Moolji Jewellers, Sector-26, Chandigarh" available in his possession and witness (wife of defendant) because if the same were produced by him, they will go against him. The Ld. Lower Court has not decided the Suit as per procedure prescribed U/S 114 (g) of the Evidence Act and has dismissed the suit on its mere presumptions that the Cheque No. 133928 was issued signed but blank for purchasing the bank draft for Rs. 50,000/- whereas the defendant has himself admitted in earlier proceedings duly sworn before the High Court that the said cheque was issued to repay the debt of Rs. 3000/-. Even findings of the JMIC, Chandigarh in judgment dated 18.05.2012, in the Complaint U/S 138 of NI Act are the same that the said cheque was issued to pay the debt of Rs. 3000/-, now the defendant has admitted on SA in his cross-examination that the cheque issued for Rs. 3000/- was duly filled up and signed but he cannot remember the number of the cheque. Hence, the suit has not been decided by the Lower Court on the basis of settled procedure and evidence produced by both the parties but has been dismissed by the Lower court on its own presumption, which is not sustainable in the eyes of law. Thus, the impugned judgments be quashed.

4. The appellant takes this Court through the detailed amount-wise findings of the learned Courts below to establish his case that there



were errors in the findings of fact returned by the learned Courts below. It is sought to be impressed upon this Court that the Courts below had failed to correctly appreciate the evidence brought on record by the appellant, therefore the findings of fact returned by both the Courts below were incorrect, from which it is clear that the suit was liable to be decreed.

5. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

6. No other argument is raised by the appellant. I have heard the appellant and perused the case file in great detail. I find no merit whatsoever in the submissions made by the appellant.

7. First and foremost, in second appeal, it is not open to this Court to re-appreciate, reconsider or interfere in the concurrent findings of fact returned by the Courts below. In the present case, by concurrent findings of fact, the learned Courts below have found that appellant/plaintiff was not entitled to recovery of the suit amount. It is not open to this Court to re-examine the evidence and/or said concurrent findings unless an error apparent is made out in the procedure or Law. I am supported in my view by the judgment of Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559** wherein it is held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in Second Appeal can interfere in the concurrent findings only



where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by the appellant.

8. The Hon'ble Supreme Court in the judgment of "**Mst. Sugani vs. Rameshwar Das and another**" **Law Finder Doc Id# 123580**, has gone on to further hold that "*the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers in second appeal*". Again, in **Avtar Singh Vs. Bimla Devi and others, 2021(4) RCR (Civil) 402** Hon'ble Apex Court has held that finding of fact cannot be interfered with in exercise of second Appellate jurisdiction.

9. Accordingly, the present second appeal deserves to be dismissed on this short ground itself.

10. Even otherwise, learned Courts below have returned findings on the evidence led by the plaintiff which did not inspire confidence of the Court. It has been observed that it is not clear as to whether the amount of Rs.2,25,000/- allegedly lent by the plaintiff to the defendant was actually a loan extended to the defendant, or the same was an adjustment between the parties with regard to excess amount taken by the plaintiff from the defendant for the flat purchase by the defendant through the plaintiff. The plaintiff has therefore been unable to establish his case.

11. Furthermore, except for the aforesaid amount of Rs.2,25,000/- all the other amounts of alleged loan were given by the plaintiff to the defendant in cash. It was the case of the plaintiff that he had taken a housing loan way back in 2001 which he had allegedly paid back to the defendant. However, the question arises as to why plaintiff



herein who himself has taken a loan in the garb of a housing loan, will further lend the same to his relative at a lesser rate of interest. Moreover, plaintiff has been unable to prove any document with regard to loan allegedly taken by the defendant. It is not even the case of the plaintiff that any document was executed by the defendant in his favour qua the alleged loan taken by the defendant from the plaintiff. The plaintiff has produced no such writing to show that any loan was taken by the defendant. Needless to say, that it is highly improbable that plaintiff would extend such a heavy loan without executing any writing to this effect.

12. It is further clarified that in 2001, plaintiff had taken loan of Rs.3 lacs for renovation of his house and then additional sum of Rs.1 lac for the same purpose. Admittedly, the plaintiff is a retired person who was drawing salary of Rs.25,000/- at the time of his retirement. Learned first Appellate Court has therefore, correctly observed that if a person takes loan of Rs.4 lacs only for the renovation of his house then the financial capacity of that person will certainly come under scrutiny and suspicion; especially when he claimed to have advanced the loan of Rs.5,75,000/- to the defendant within a short span of 7 months. Moreover, details of cash loan given by the plaintiff to defendant on various dates have not been mentioned individually. Only a lumpsum amount of Rs.5,75,000/- is claimed to have been give as loan within a period of 7 months.

13. Furthermore, there was contradiction in the case as set up by the plaintiff in the plaint and that set up at the time of arguments; *in-as-much* as there was no claim in the plaint that the money had been given



to the defendant for purchasing gold/silver ornaments on 21.06.2004 as claimed by plaintiff at the time of argument. It had been claimed by the plaintiff that cheque for Rs.2,25000/- was issued to Mool Ji Jeweller. Hence, plaintiff was required to summon witness from the said jeweller to substantiate his plea.

14. It has also come on record that the plaintiff in his cross-examination has stated that the said amount has been paid by the plaintiff to the defendant in the name of some jeweller but no bills of any jeweller issued in the name of the defendant had been brought on record by the plaintiff against which the plaintiff could have claimed that the said cheque of Rs.2,25,000/- had been given for the purpose of buying jewellery by the defendant. Admittedly, no receipt has been produced or even stated to have been maintained by the plaintiff in extending the loan in cash amounts. Even assertion of the plaintiff that he had received a call from the wife of the defendant asking the plaintiff to extend the loan period, is not borne out from the record as it has been found that at the time of alleged call, wife of the defendant was very much in India. This has been admitted by the plaintiff. In fact, Plaintiff has also stated that she/defendant's wife was there with them. Therefore, there is no question of any call.

15. The appellant is unable to controvert or dispute the above said facts and findings.

16. Thus, keeping in view the above said facts, present Regular Second Appeal is hereby **dismissed**.



17. Pending applications, if any, stand disposed of.

**12.09.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

<b>Whether speaking/reasoned:</b>	<b>Yes/No</b>
<b>Whether reportable:</b>	<b>Yes/No</b>