2026:DHC:5483

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on: 10th April, 2026***
Pronounced on: 7th July, 2026

\+ **RFA 8/2026, CAV 2/2026, CM APPL. 180-181/2026 & 183/2026**

1. **M/S R.K. GUPTA BUILDING MATERIAL**
Through its Proprietor /Partners/ Authorized
Representatives Having Office at
A-270, Raksha Enclave,
Mohan Garden, Uttam Nagar,
New Delhi-110059.

2. **RAKESH GUPTA**
S/o Late Sh. Chnadrapal Gupta
R/o A/9, Sainik Enclave, Mohan Garden
Uttam Nagar, Delhi-110059.

3. **KRISHNA GUPTA**
S/o Sh. Rakesh Gupta
R/o A/9 Sainik Enclave, Mohan Garden
Uttam Nagar, Delhi-110059.

.....Appellants

Through: Ms. Swati R.K. with Mr. Mohnish Balu, Advocates.

versus

SMT. MADHU GUPTA
W/o Sh. Vinay Kumar Gupta
R/o MB-120-3, Master Block
Shakarpur, Near Aggarwal Dharamshala
Delhi-110092.

.....Respondent

Through: Ms. Sanjana Srivastava, Advocate

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 CPC has been filed Judgment and Decree dated 30.07.2025, whereby the learned District Judge *has dismissed the Leave to Defend Application* filed by the Defendant/Appellant in the Civil Suit for *Recovery of Rs.50 lakhs under Order XXXVII* CPC and **decreed the Suit of the Plaintiff for Rs.50 lakhs along with *pendent lite* and future interest @ 24% per annum** from the due date till the realization of the entire amount.

2. The Plaintiff had filed a **Suit CS. No.402/2020** under Order XXXVII CPC, for *recovery of Rs.50 lakhs along with pendent lite and future interest @ 24% per annum.*

3. The **facts as narrated in the Plaint,** are that the Defendant No.2 R.K. Gupta and Defendant No.3 Krishna Gupta @ Kanhiya Gupta were distant relatives of the Plaintiff, Smt. Madhu Gupta and were having good family relations. *Defendant No.1 was the Proprietorship firm/Partnership* Firm run by Defendant No.2 and 3, under the name and style of M/s R.K Gupta Building Material.

4. The Defendant No.2 and 3 approached the Plaintiff in September, 2014 through Shri Om Prakash Gupta, the distant relative, for a personal friendly loan of Rs.25 lakhs, for expanding their business. The Plaintiff, in the presence of her husband Shri Vinay Kumar Gupta, advanced the loan of Rs.25 lakhs for three years, which the Defendants had undertaken to return along with the profits. The Defendants had further promised that irrespective of whether they earn profit or not, they shall return Rs.50 lakhs (Rs.25 lakhs for Principal and Rs.25 lakhs towards the profit) to the Plaintiff, on or before the period of three years. The Defendant No.3 issued two cheques in favour of the Plaintiff, but under different signatures. When the Plaintiff questioned him about the different signatures, he stated that he was maintaining two Bank Accounts and had different signatures in the two Banks, because of security reasons.

5. The Plaintiff presented the two cheques in her Bank on different dates, but the cheques were dishonoured with the remarks "*funds insufficient*" and "*payment stopped by drawer,*" vide Return Memo dated *08.08.2017* and *30.08.2017* respectively. The Plaintiff thus, issued one Legal Notice dated 04.09.2017, to which the Defendants sent a Reply dated 11.09.2017 containing false averments.

6. *The Plaintiff filed a Complaint under Section 138 NI Act before the learned CMM*, which is pending trial. The Plaintiff also made a Criminal Complaint against the Defendants to SHO Shakarpur, Delhi.

7. *The Plaintiff thus, filed the Suit under Order XXXVII CPC for Recovery of Rs.50 lakhs along with pendent lite and future interest @ 24% per annum.*

8. *The* Defendants/appellants, on receiving the summons, filed their *Application for Leave to Defend under Order XXXVII Rule 3(4) CPC,* wherein the Defendants/Appellants took the plea that the Suit was not maintainable, as the transaction was commercial in nature and it did not fall within the domain of the learned District Judge. The Suit could have been tried only by a *Commercial Court, as per the Commercial Courts Act, 2015*. Therefore, the Suit was liable to be rejected.

9. The Defendants/Appellants further took the objection that the Plaintiff is not a Banker and is *not registered under the Punjab Registration of Money Lender's Act, 1938* and the transaction was barred under the said Act.

10. It was further claimed that the *cheques in question, had been misused* by the Plaintiff in connivance with her husband, and the Suit did not disclose any cause of action and was liable to be rejected under Order VII Rule 11 CPC. The Defendants claimed that the true facts had been concealed from the Court and the Plaintiff had not approached the Court with clean hands.

11. The Defendants admitted that the Plaintiff and her husband, are relatives of Defendant No.2 and 3 and were on visiting terms. The Defendants asserted that they came to know that the husband of the Plaintiff gives loans to public persons. They were in dire need of money and thus, requested a loan of Rs.25 lakhs from the husband of the Plaintiff. The said amount was accordingly, given to the Defendants *as interest free friendly* *loan.* At the time of giving the loan, Plaintiff and her husband took one signed cheque bearing No.000136 from the Defendants, for the purpose of security.

12. The Defendants/Appellants claimed that they paid the loan amount to the Plaintiff and her husband *in cash*, on different dates i.e. Rs. 4 lakhs on 17.04.2016, Rs.3 lakhs on 10.05.2016, Rs.3 lakhs on 15.07.2016, Rs. 1 lakh on 17.09.2016, Rs.1 lakh on 20.10.2016, Rs.1 lakh on 30.10.2016, Rs.5 lakhs on 10.12.2016, Rs.4 lakhs on 05.03.2016 and Rs.3 lakhs on 05.06.2017.

13. After making payment of the entire loan amount, Defendants asked the Plaintiff and her husband to return the security cheque, but they postponed it, on one pretext or the other. Since then, the Defendants had been requesting the Plaintiff and her husband for return of the cheque but to no avail.

14. It is further asserted that the cheque bearing No.000018 pertaining to Bank of Baroda Account, *was misplaced* and the Defendants gave instructions to Bank of Baroda vide Letter dated 02.08.2022 to stop payment of all cheques and the payments were accordingly stopped.

15. It was further asserted by the Defendants that later on, it came to the knowledge of Defendant No.3 that *the husband of Plaintiff had stolen the cheque* which contained unsigned and unfilled cheques including Cheque No.000018. It was claimed that the said cheque was misused by forging the signatures of Defendant No.3, as the said cheque did not have the signatures of Defendant No.3.

16. Admittedly, the Plaintiff has filed the Complaint under Section 138 NI Act, but it is not mentioned therein that she had given a friendly loan. In fact, she has stated that Defendant No.2 and 3, who were in need of money for family business, had taken the financial help to promote the growth of their family business and had promised to pay the principal as well as profit to the Complainant, in future. The Plaintiff further stated in her Complaint that she had advanced the sum of Rs.25 lakhs on 29.09.2014 vide cheque No.52, which was promised by the Appellants to be returned along with the profits, on or before 05.08.2017. *It was denied that the loan given was friendly and claimed that the loan was commercial in nature.*

17. The Defendants/Appellants further asserted that in order to extract money illegally and unlawfully, the Plaintiffs have taken two different stands in two different proceedings. The alleged cheques on which the Suit of the Plaintiff was based, were never issued by the Defendants in discharge of their liability. *They are not liable to return Rs.50 lakhs to the Plaintiff.* However, the Plaintiff, in collusion with her husband, *has filed the present false Suit for Recovery of Rs.50 lakhs.*

18. The Defendants thus, claimed that there were triable issues raised in their Leave to Defend Application and they be granted unconditional Leave to Defend the Suit.

19. The *Leave to Defend Application was contested by the Plaintiff/Respondent* who claimed that no triable issues were raised in the Leave to Defend Application. The claim of the Plaintiff was based on two cheques issued by the Defendants, which is an admitted fact, except the bald allegation of theft of one cheque. There is no Complaint or FIR filed in respect of the alleged theft of the cheque. The Defendants have admitted taking Rs.25 lakhs in their Account from the Plaintiff, and there is not a single document by way of acknowledgement or Receipt of return of loan amount, to the Plaintiff. The documents of the Defendants/Appellants reflected that the *stop payment instructions were issued in respect of 15 cheques*, whereas as per the case of the Defendants, only one cheque was allegedly stolen, which is contrary to the case put forth by the Defendants.

20. After the filing of the reply to the Legal Notice, they had given their Statement under Section 251 Cr.P.C before the learned M.M in the Complaint under Section 138 NI Act. However, they did not at any point in time, give details of the alleged return of the loan amount to the Plaintiff, and this plea has been raised for the first time in the Leave to Defend Application.

21. The Plaintiff denied that the Suit had been filed on false and frivolous submissions, by concealing material facts. It was denied that the Suit did not fall within the parameters of Order XXXVII CPC or that the loan transaction was commercial in nature. It was also denied that the loan taken from the Plaintiff, was barred by the Punjab Registration of Money Lender's Act, 1938.

22. The Plaintiff further denied that the loan given was an interest-free friendly loan or that one signed cheque bearing No.000136 was given by the Defendants, for the purpose of security. In the Reply to Legal Notice, it had been mentioned that from October, 2014 the Plaintiff had been receiving proportionate share of profits and part of principle amount in cash, which continued till July, 2017. It is denied that any amounts were returned to the Plaintiff on the dates as mentioned in their Leave to Defend Application. Furthermore, the Defendants had given a different version in the Reply to the Legal Notice, given by the Plaintiff.

23. The allegation of the cheque being stolen by the husband of the Plaintiff, or one cheque No.000018 having been misused by forging the signatures of Defendant No.3, was also denied. It was stated that Defendant No.3 had filled the amount in words and numbers in his own handwriting but had intentionally signed the cheques differently, for which he had given the explanation that the two Banks had his different signatures. *The averments made in the Leave to Defend Application were thus, denied.*

24. The *learned District Judge in the impugned Order dated 30.07.2025* considered that the Defendants had admitted having taken a loan of Rs.25 lakhs, but had claimed in their Reply to Legal Notice that the proportionate share of profit along with the principal amount was returned to the Plaintiff regularly. However, a different stand had been taken in the Leave to Defend

Application, wherein it was asserted that the loan had been repaid to the Plaintiff, in various instalments. The learned District Judge observed that during the course of the arguments, an enquiry was made from the Counsel for the Defendants regarding any proof of the alleged payments to the Plaintiff, to which an answer in the negative was given. It was thus, held that the contention of the Defendants that the loan/ the profits stood paid was disbelieved.

25. Likewise, the defence that the Cheque Book containing the Cheque No.000018 being stolen by the husband of the Plaintiff, was also rejected by observing that such alleged theft was not supported with any Complaint to the Police in regard to the theft or the signatures having been forged by the husband of the Plaintiff. It was further noted that the stand taken by the Plaintiff in the Suit, was similar to the one stated in the Complaint under Section 138 NI Act.

26. It was further observed that *Defendant No.3 Krishana Gupta* had signed in two names i.e. Kanhaiya and Krishana Gupta. Though he disputed his signatures in the name of Krishana Gupta, but had given no explanation as to why he kept two different names for signatures in the two different Banks. Keeping such different names in two Banks, was held to be pointing to the habit of Defendant No.2 to cheat people by signing in two different names.

27. It was thus, held that the Leave to Defend Application did not disclose any triable issue. ***The Leave to Defend Application was dismissed***

and the Suit of the Plaintiff for Rs.50 lakhs along with interest @ 9% per annum on the sum of Rs.25 lakhs, i.e. the principal amount, from the date of filing of the Suit until realization, was granted.

28. Aggrieved by the Judgment and Decree dated 30.07.2025, the Defendants/Appellants have filed the **present Appeal**.

29. The ***grounds of challenge*** are that several bona fide triable issues had been raised in the Leave to Defend Application which could not have been adjudicated without recording of evidence, for which reliance was placed on *IDBI Trusteeship Service Limited vs. Hubtown Limited* (2017) 1 SCC 568.

30. It was asserted that the Appellants had already made payment of the entire loan amount in cash and the said defence could not have been rejected at the threshold. Reliance is placed on *Georgekutty Chacko vs. M.N. Saji*, SLP No.11309 of 2025, decided on 01.09.2025.

31. The defence of the Appellant was that one cheque only had been given as security, while the second cheque was forged/misused, which raised a substantial defence. Whether the cheques were issued towards a legally enforceable liability, was a triable issue.

32. Further, the cheque issued for security purposes, cannot be encashed for liability or an existing legally enforceable debt, as held by this Court in *Sri Sai Saptha Giri Sponge Pvt. Ltd. vs. The State (GNCT of Delhi)* decided on 27.10.2025.

33. The Plaintiff had taken contrary stands in the two litigations, filed on the same issue in one case. In the Recovery Suit, the Plaintiff had described the transaction as a commercial loan with the share in profit, whereas in her Complaint under Section 138 of the NI Act, it was described as financial help as both the parties had good family relations.

34. Moreover, the stipulation that Rs.25 lakhs would be doubled to Rs.50 lakhs in three years is inconceivable and opposed to public policy, under Section 23 of the Contract Act, for which reliance is placed on *Central Inland Water Transport Corp. v. Brojo Nath Ganguly* (1986) 3 SCC 156. In the absence of documentary proof of such a large financial transaction, the trial was required to prove the same. Reliance is placed on *Union of India vs. Vasavi Cooperation Housing Society* (2014) 2 SCC 269.

35. It was further asserted that interest @ 9% per annum on Rs.25 lakhs is arbitrary in the absence of any contractual stipulation, for which reference is made to *Punjab & Sind Bank vs. Allied Beverage Co*. 1995 (32) DRJ 92.

36. Subsequent to the impugned Decree, the Appellant No.3 has been found guilty in respect of one cheque of Rs.25 lakhs, while he has been acquitted in regard to the second cheque of Rs.25 lakhs under Section 138 NI Act. The acquittal relating to the second cheque demonstrates that the Plaintiff's claim for singular liability of Rs.50 lakhs was false and inflated. The impugned Judgment, therefore, is liable to be set aside and the Leave to Defend may be allowed, and the Suit remanded back for regular trial.

37. ***The Respondent in her written submissions*** had submitted that the alleged defence of one cheque being stolen and forged, is entirely without any substance. There was no Complaint lodged with the Police in regard to the alleged theft of the Cheque Book and no FIR was registered. The so-called '*Stop Payment"* instructions were issued much later and without any contemporaneous explanation. The allegation of theft and forgery, is clearly an afterthought to evade the liability.

38. The Respondent/Plaintiff further claimed that the Appellants had asserted the refund of Rs.25 lakhs advanced as an interest-free loan, which was paid by him in instalments from 17.04.20165 to 05.06.2017. However, in his Notice under Section 251 Cr.P.C in the Complaint under Section 138 NI Act, he admitted in his Statement dated 13.12.2021 that the signatures on the subject cheque were of Defendant No.3. He had taken a vague plea that the cheque had been *issued as a security cheque*, but since the entire loan amount of Rs.25 lakhs stood paid without furnishing any proof of such payment.

39. The contradictions are further evident from his Statement dated 24.05.2023 made in the Complaint under Section 138 NI Act, where he asserted that he had repaid approx. Rs.26 lakhs in cash during 2016-17 which figure is altered subsequently to approx. Rs.32 lakhs, in his Statement dated 17.12.2024.

40. Furthermore, despite claiming full repayment in cash, the Appellant No.3 in the Civil proceedings, had taken an absolutely contradictory defence; even after asserting that the entire amount stood repaid, Appellant No.3 vide Order dated 22.04.2025 in the present Recovery Suit, had expressed his willingness to pay the sum of Rs.35 lakhs, which is wholly irreconcilable to his defence of having made the entire payment.

41. The Respondent asserted that the loan transaction cannot be termed as commercial, as Respondent is not in the regular business of money lending. There is no written Agreement between the parties, and the loan was given for expanding business, which cannot be termed as a commercial transaction. Reliance is placed on *Ladymoon Towers (P) Ltd. vs. Mahendra Investment Advisors (P) Ltd*., 2021 SCC Online Cal 4240; *Manesh Rajkumar Kanhed vs. Ramesh Bhagwansa Walale* AIR 2007 Bom 86.

42. It was further asserted that there is no evidence or material on record and no substantial defence or genuine triable issues had been raised in the Leave to Defend Application. The defence agitated in the Application was entirely vague and without any basis. Reliance is placed on *M.R. Pipes Pvt. Ltd. vs. RCC ECO Build Systems Ltd*. 2023 SCC Online Del 7909.

43. The defence of the cheque No.000018 being stolen or the signatures been forged is not tenable and in view of the contrary stands taken by the Defendant No.3 in different proceedings. Reliance is placed on *Sushila Giri vs. Nitish Kaushik* 2018 SCC OnLine Del 7080 and *Mohammad Shafi Wani vs. Noor Mohammad Khan* MANU/JK/0164/2022 and *Laxmi Dyechem vs. State of Gujarat*.

44. The defence as raised in the Leave to Defend Application, is bereft of any material particulars and unsubstantiated. Reliance is placed on *Kewal Krishan Kumar vs. Sameer Bhutani*, 2019 SCC OnLine Del 9465.

45. In the end, it was contended that the Suit under Section XXXVII CPC was maintainable as it was based on dishonoured cheques executed by the Defendant No.3, in favour of the Plaintiff. Reliance is placed on *Rajesh Laxmichand Udeshi vs. Pravin Hiralal Shah* 2012 SCC OnLine Bom 2181; *VK Enterprises vs. Shiva Steels* (2010) 9 SCC 256; *Reliance Industries Ltd. vs. Imperial Pigments* 2003 SCC OnLine Del 296 and *Iram Feroz vs. Ayaz Gadhiya* 2005 SCC OnLine Bom 1431.

46. It is, therefore, submitted that there is no merit in the present Appeal, which is liable to be dismissed.

Submissions heard and record perused.

47. The Plaintiff / Respondent Madhu Gupta had filed Suit for Recovery of Rs.50 lakh on the basis of two cheques dated 31.07.2017 and 05.08.2017 of Rs.25 lakh each. Plaintiff explained in the Plaint that Defendant Nos.2 and 3, who were running their business under the name and style of M/s R. K. Gupta Building Material and were on friendly terms with the Plaintiff, had approached her in September, 2014, through their distant relative Shri Om Prakash Gupta, for advancement of loan of Rs.25 lakhs. It was stated that the money was required for the purpose of their business and they assured that there was a great opportunity and profit in the business of supply of building material. They assured that they would return the principal loan amount of Rs.25 lakhs along with the profit earned from the business in a period of three years or else, they would in any case, pay Rs.25 lakhs as the quantified amount for the profit, estimated to be earned in the three years.

48. It was assured that whether the Defendants earn any profit or not, they shall return Rs.50 lakhs. Defendants in the Leave to Defend application have not denied having taken a loan of Rs.25 lakhs from the Plaintiff Madhu Gupta.

49. The *first preliminary objection* by the Defendants / Appellants, was that the loan was taken for the expansion of their business and therefore, was a ***commercial transaction,*** which could have been considered only by a Commercial Court and not by the District Court.

50. From the pleadings as well as the response of the Defendants in the Written Statement, it is evident that the loan taken was a personal loan, though it may have been intended by the Defendants to be invested in their business. Merely because it was intended to be utilized for a business activity does not change the nature of the loan, which was essentially a friendly loan taken by the Defendants.

51. Admittedly, the Plaintiffs were known to the Defendants and Defendants had approached them through Shri Om Prakash Gupta. From the averments made in the Plaint as well as the submissions made in the Leave to Defend Application, it is evident that it was a personal friendly loan taken by the Defendants and did not qualify as a commercial loan.

52. Learned District Judge, therefore, rightly rejected the contention of the Defendants that the Suit should have been filed before the Commercial Court, since it was a personal loan taken by the Defendants.

53. The ***second contention*** raised by the Defendants is that they were given a loan ***without having a valid license under the Punjab Registration of Money Lenders Act, 1938.*** However, this contention is also not acceptable for the simple reason, as already observed, that the loan had been taken as a personal loan and was not given by the Plaintiff as part of their business. There is not a single averment to show that the Plaintiff was in the business of money lending or that the Defendants had taken a loan from the Plaintiff, as a money lender.

54. As already stated above, Plaintiff and Defendants were known to each other, and it is in this capacity that a personal loan was given to the Defendants. *The bar of the Punjab Registration of Money Lenders Act, 1938, is therefore not attracted in the given circumstances and this preliminary objection taken by the Appellants was also without any merit.*

55. Defendants had admitted taking a loan of Rs.25 lakhs, which was credited to their Account, through a Bank Transaction. Defendants have also admitted having issued the first cheque in the sum of Rs.25 lakhs to the Plaintiff. Once it is held that the loan transaction of Rs.25 lakhs was not denied by the Defendants, it is evident that the cheque of Rs.25 lakhs dated 31.07.2017 was issued in discharge of a legally enforceable liability.

56. The objection taken by the Defendants was that the first cheque had been issued by him *as a security* for the loan of Rs.25 lakhs and could not have been presented for encashment.

57. The law in respect of security cheque is well settled. The Supreme Court in the case of *Sripati Singh v. State of Jharkhand*, (2022) 18 SCC 614 has explained the concept of Security Cheques wherein it was observed:

> *"21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. "Security" in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound.* ***If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present***

> ***the same**. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.”*

58. Reliance may also be placed on the case of *Bir Singh v. Mukesh Kumar,* (2019) 4 SCC 197 wherein the Supreme Court observed:

> *“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*
>
> ***34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence**.*

> *36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."*

59. The above view was also reiterated by the Supreme Court in the case of *Kalamani Tex v. P. Balasubramanian* (2021) 5 SCC 283.

60. This objection of the first cheque was a security for the loan of Rs.25 Lacs, is therefore, not tenable in law.

61. The other defense which had been taken by the Appellants, ***is that they had returned the entire amount of Rs.25 lakhs in cash, as follows***:

i) Rs. 4,00,000/- on 17.04.2016

ii) Rs. 3,00,000/-on 10.05.2016

iii) Rs. 3,00,000/- on 15.07.2016

iv) Rs. 1,00,000/- on 17.09.2016

v) Rs. 1,00,000/- on 20.10.2016

vi) Rs. 1,00,000/- on 30.10.2016

vii) Rs. 5,00,000/- on 10.12.2016

viii) Rs. 4,00,000/- on 05.03.2017

ix) Rs. 3,00,000/- on 05.06.2017

62. First and foremost, when the amount had been taken in the account, there is no explanation why the return of the loan amount had been taken without there being any Receipt. While the Defendants/ Appellants have claimed the return of the loan amount, it is in cash, of which there is absolutely no corresponding / supporting document or evidence.

63. In this context, it is also pertinent to note that the Defendants had claimed that Defendant No.3 Krishana Gupta in his Statement under Section 251 Cr.P.C. in the case under Section 138 NI Act had not given these details of return or repayment of the loan amount in cash to the Respondent.

64. Furthermore, in the Reply to Leave to Defend Application, the Defendant in his Statement recorded on 28.03.2023 in the Complaint under Section 138 NI Act, while claiming that he had returned approximately Rs.26 lakhs in cash during 2016-17, the figure was subsequently altered to Rs.32 lakhs in his Statement dated 17.12.2024.

65. Furthermore, the Defendant in his Statement recorded in the Order dated 22.04.2025 in the Recovery Suit had expressed his willingness to pay Rs.35 lakhs, which conduct is completely irreconcilable to his claim of having returned the loan amount of Rs.25 lakhs. Learned District Judge, therefore, has rightly rejected the defence that loan of Rs.25 lakh had been returned between 2016 to 2017 in instalments in cash.

66. *Admittedly, this cheque on presentation was dishonored for **'funds insufficient'** on 08.08.2017*. A Complaint under Section 138 of the NI Act was filed by the Plaintiff in respect of this dishonored cheque and has been decided against the Defendants. Therefore, there is no defence disclosed in respect of this first cheque of Rs.25 lakhs, which clearly defines the liability of the Defendants to pay the amount of Rs.25 lakhs.

67. Defendants have raised a *challenge in respect of the balance amount of Rs.25 lakhs* for which cheque No.000018 dated 05.08.2017 had been issued, which was dishonored on these on account of "*stopped payment*".

68. Plaintiff had made a specific plea that on the loan of Rs.25 lakhs, which was intended to be invested by the Defendants in the business and to earn huge profits, was undertaken to be returned with the profits in three years or else a sum of Rs.25 lakhs towards the profits.

69. The *first defence* taken by the Defendants is that there was no Agreement for payment of profit / Rs.25 lakhs as profit, on the loan of Rs.25 lakhs taken by the Defendants for investment in their business.

70. However, this transaction is substantiated by *second cheque* No.000018 dated 05.08.2017, in the sum of Rs. 25,00,000/-. Defendants have claimed that this second cheque dated 05.08.2017 had not been given by them and they came to know subsequently that the cheque-book, which also contained the cheque No.000018, had been stolen by the Plaintiff's husband.

71. It has been rightly noted by the learned District Judge that there was *no Complaint or FIR ever made by Defendant No.3 Krishana Gupta in respect of this alleged theft*. The cheque had the signatures of the Defendant, and the reason for dishonor was '*stopped payment'*.

72. Defendants had relied upon a Letter dated 02.08.2022 written to Bank of Baroda, for stoppage of cheque. The perusal of Letter dated **02.08.2022,** reflects that it is issued by Bank of Baroda merely certifying that the cheque No.000018 dated 05.08.2017 was dishonoured, on account of 'stop payment'. This letter is only a Bank Certificate procured by the Appellant in 2022, merely to corroborate the reason for dishonour of the Cheque.

73. It is not a Letter written by the Defendants to the Bank or explaining the reason for stoppage of the cheque. Had the Defendants got the cheque stopped for the reason that the entire cheque book was stolen, the best way for them was to produce the Letter/instructions given by them to the Bank for stoppage of payment against the cheque; the Defendants have failed to produce the Letter/instructions issued in 2017, disclosing the reason for stoppage of payment against this cheque.

74. The *glaring aspect* is that the Defendants have failed to disclose the date on which the instructions were given to the Bank for stoppage of payment. Pertinently, the first cheque got dishonoured on 08.08.2017 and the second cheque dated 05.08.2017 got dishonoured on 30.08.2017, for the reason '*stop payment'*.

75. While the Appellant has claimed that he got the payment of all the cheques of one cheque-book stopped, such instructions for stoppage of payment in no way disclose or corroborate the defence of alleged theft of the cheque book by the Plaintiff's husband. Clearly, this defence has been raised only to explain the non-encashment of the second cheque, on account of stoppage of the payment.

76. Learned District Judge has rightly observed that there were no facts or circumstances disclosed by the Defendants/ Appellants in the Leave to Defend Application, to substantiate that the cheque book had indeed been stolen by the Plaintiff's husband. No date or time frame has been given for the alleged theft of the cheque book. *Therefore, the learned District Judge rightly rejected this explanation of the Appellants.*

Conclusion:

77. Learned District Judge, therefore, rightly observed that there was *no triable issue raised in the leave to defend Application* and rejected the leave to defend Application. The *Suit of the Plaintiff has been rightly decreed for a sum of Rs.50 lakhs along with Simple Interest at the rate of 9% per annum on the principal loan amount of Rs.25 lakhs.*

78. There is **no merit in the present Appeal, which is hereby dismissed**. Pending Applications are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 7, 2026
va