2026:DHC:5911

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

% ***Reserved on: 24th April, 2026***

Pronounced on: 24th July, 2026

\+ **RFA 43/2024, CM APPL. 2946/2024**

Mr. NITIN KHURANA
S/o Late Sh. Ashok Kumar Khurana,
R/o C-5, Upper Ground Floor,
Naraina Vihar, New Delhi. .....Appellant

Through: Mr. Nagendra Kumar, Ms. Ananya Pandey and Mr. Divesh Ranjan, Advocates

versus

Mr. ANIL GROVER
S/o Sh. K. K. Grover,
R/o I-305, Naraina Vihar, New Delhi. .....Respondent

Through: Mr. Arvind Chaudhary, Mr. Vinay Kumar, Mr. Sachin Chaudhary and Mr. Ankit Chaudhary, Advs

.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 *(hereinafter referred to as "CPC")* has been filed on behalf of the Appellant/Defendant assailing the Order and Decree dated 08.11.2023, *whereby the Application seeking Leave to Defend under Order XXXVII Rule 3(5) of CPC was* ***dismissed*** and the Summary Suit filed by the Respondent/Plaintiff for *recovery of Rs.58,00,000/-,**was decreed** along with pendente lite and future interest @ 9% per annum.*

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2. The Respondent/Plaintiff had filed a *Summary Suit bearing CS 286/2022 under Order XXXVII CPC for recovery of Rs.58,00,000/- along with pendente lite and future interest @ 18% per annum*.

3. ***The facts***, as stated in the Plaint, are that the Plaintiff is a resident of I-305, Naraina Vihar, New Delhi, while the Defendant is a resident of C-5, Upper Ground Floor, Naraina Vihar, New Delhi and they shared a relationship of familiarity and trust. Following the demise of the Defendant's father, the Plaintiff had come to treat the Defendant as his own son, and it was in this backdrop that the Defendant and his wife would frequently approach the Plaintiff and his wife, Smt. Alka Grover, for financial assistance.

4. In the year 2016, the Plaintiff, who had retired from private employment, had invested his retirement benefits in Mutual Funds and Fixed Deposit Schemes. The Defendant and his wife, being aware of the Plaintiff's financial standing, approached the Plaintiff for financial help, on the representation that they intended to start a new business.

5. Reposing faith in them, the Plaintiff, from his own Account as well as that of his wife, *transferred a sum of Rs.30,00,000/- by way of bank transfers,* into the accounts of the Defendant and his wife. Since the amount advanced was substantial, the Defendant and his wife executed a duly ***notarised Receipt*** *dated 10.10.2018, acknowledging receiving of Rs.30,00,000/- from the Plaintiff. Further, to secure the said amount they had entered into an Agreement to Sell with the Plaintiff and his wife, in respect of residential premises bearing No.C-5, Upper Ground Floor, Naraina Vihar, New Delhi.*

6. Subsequently, upon a further request, *the Plaintiff advanced an additional sum of Rs.20,00,000/-*, thereby raising the total financial assistance extended to the Defendant and his wife, *to Rs.50,00,000/-.*As against this, the Plaintiff averred that over a period of *nearly five years, only Rs.9,20,000/- was repaid*, as the Defendant and his wife having repeatedly expressed their inability to clear the dues, on the ground that their business had closed, on account of the COVID-19 pandemic.

7. After persistent follow-ups, the parties met in the first week of March, 2022 to reconcile and finalise the outstanding dues. During the said meeting, the Defendant and his wife, admitted their liability towards interest amounting to Rs.12,00,000/- payable on the principal amount of Rs.30,00,000/- for the period October, 2018 to February, 2022, and Rs.5,20,000/- on the balance amount of Rs.20,00,000/- for the period December, 2019 to February, 2022. *Thus, the total outstanding amount was computed asRs.67,20,000/-, out of which Rs.9,20,000/- had been repaid,* ***leaving a balance of Rs.58,00,000/-.***

8. In discharge of the said liability, the Defendant issued Cheque bearing No.000011 dated 09.03.2022 for Rs.58,00,000/-, drawn on Kotak Mahindra Bank, Naraina Industrial Area, Phase-I, New Delhi, in favour of the Plaintiff, assuring that it would be honoured on presentation. However, on presentation on 10.03.2022, the cheque was returned unpaid with the remarks *"Insufficient Funds" vide* Cheque Returning Memo dated 10.03.2022received by the Plaintiff, on 12.03.2022.

9. Upon dishonour of the cheque, the Defendant and his wife made only sporadic payments of paltry amounts of less than Rs.10,000/- each, coupled with assurances that they were making financial arrangements and would clear the outstanding dues by the first week of April, 2022. However, when no payment was forthcoming, the Plaintiff issued a Legal Notice dated 08.04.2022, to which the Defendant, gave a Reply dated 20.04.2022, denying any liability.

10. The Plaintiff filed a *Complaint Case No.5465/2022 under Section 138 of the Negotiable Instruments Act, 1881*, which is pending adjudication before the learned Metropolitan Magistrate, New Delhi.

11. The Plaintiff also instituted the present *Summary Suit under Order XXXVII CPC for recovery of Rs.58,00,000/-, along with pendente lite and future interest @ 18% per annum*.

12. On being served with the Summons for Judgment, the Appellant/Defendant filed an ***Application under Order XXXVII Rule 3(5) CPC seeking unconditional Leave to Defend***.

13. In the *Application for Leave to Defend*, ***the Defendant admitted that financial aid of Rs.50,00,000/- had been provided by the Plaintiff.*** However, it was asserted that out of the said amount, Rs.30,00,000/- was treated as advance/earnest money for sale-purchase of property bearing No.C-5, Upper Ground Floor, Naraina Vihar, New Delhi, for a total sale consideration of Rs.2.50 crores. Furthermore, a Bayana Receipt dated 10.10.2018 and an Agreement to Sell dated 10.10.2018 were executed between the parties, and the Plaintiff was required to pay the balance consideration, within six months.

14. According to the Defendant, since the Plaintiff failed to perform his part of the bargain and did not pay the balance consideration of Rs.2.20 crores within the stipulated period, *the earnest money of Rs.30,00,000/- was forfeited, a fact within the Plaintiff's knowledge*. It was further alleged that although the Plaintiff had referred to the Agreement to Sell in the Plaint, he had deliberately withheld it from placing it on the record.

15. As regards the balance sum of Rs.20,00,000/-, the Defendant asserted that it was *interest-free financial assistance*, against which he had made regular repayments both in cash and through online transactions, leaving only Rs.4,00,000/- outstanding. This residual amount had been deliberately withheld on account of the Plaintiff's failure to return the gold articles belonging to the Defendant's mother/wife, which stood pledged and remained in the possession of the Plaintiff.

16. The Defendant *denied any liability towards interest*, contending that there was no agreement for payment of interest and that the Plaintiff had arbitrarily added ***Rs.17,20,000/- towards interest,*** without furnishing any basis or calculation thereof.

17. It was also contended that the cheque in question *had been misused;* owing to the close relationship between the parties. The Defendant was in the habit of handing over blank signed cheques to the Plaintiff, for payment of utility bills, and the cheque in question was one such blank cheque given in the year 2018, the amount in words and figures therein, are not in the Defendant's handwriting.

18. Apart from the merits, the Defendant assailed *the very maintainability of the Sui*t, claiming that it was not within the ambit of Order XXXVII CPC, and the reliefs beyond its scope had been claimed. It was further asserted that *proper Court Fee had not been affixed*, and that the *Trial Court lacked territorial jurisdiction.*

19. The Defendant asserted that substantial triable issues arose and prayed for unconditional Leave to Defend.

20. In its ***Reply to the Leave to Defend Application***, a preliminary objection was raised that the Application for Leave to Defend had not been filed within the statutory period and was, on that count alone, liable to be rejected. ***The Plaintiff*** refuted the existence of any *bona fide* or plausible defence, terming it frivolous, illusory and moonshine.

21. ***On merits***, the Plaintiff denied that Rs.30,00,000/- was earnest money for sale of the property. It was pointed out that the Agreement-cum-Bayana Receipt neither mentioned any sale consideration of Rs.2.50 crores nor stipulated any time-frame for completion of the transaction. Contrary to the Defendant's assertion, the said document had in fact, been placed on record along with the Plaint. The Plaintiff maintained that neither party ever intended to sell or purchase the property, and that the Receipt was executed only to acknowledge and secure the sum of Rs.30,00,000/-.The Plaintiff also denied that any gold articles of the Defendant, his wife or his mother had been pledged with or retained by the Plaintiff.

22. The Plaintiff denied the plea of repayment of Rs.20,00,000/-, pointing out that not a single document evidencing such repayment, had been placed on record. To rebut the plea that the transaction was interest-free, the Plaintiff relied upon Annexure A-1, filed by the Defendant himself along with the Leave to Defend Application, which recorded entries of *"July Int"*, *"August Int"* and *"Sep Int"*, thereby contradicting the plea that the amount was interest-free.

23. The Plaintiff further highlighted the *shifting stands* of the Defendant. Whereas in the Reply dated 20.04.2022 to the Legal Notice, the Defendant had asserted that the Plaintiff has retained gold articles worth Rs.30,00,000/- and that he had repaid Rs.46,00,000/-; in the Leave to Defend Application,

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he had taken an entirely different stand, stating that Rs.30,00,000/- stood forfeited as earnest money and only Rs.4,00,000/- remained payable.

24. It was therefore, asserted that the defence raised by the Appellant/Defendant, was inconsistent and contrary to record.

25. On the plea of misuse of cheque, the Plaintiff denied that any blank signed cheques had been handed over to him, for payment of utility bills. It was further asserted that merely because the amount in words and figures on the cheque may not be in the handwriting of the Defendant, the same would not *ipso facto* absolve him of liability, as the cheque had been handed over by the Defendant to the Plaintiff.

26. The Respondent/Plaintiff also denied the objections regarding maintainability of the Suit under Order XXXVII CPC and it was asserted that the Suit was based on a cheque, which is a bill of exchange, and was therefore, squarely maintainable.

27. The **learned District Judge**, upon consideration of the rival pleas**, held** that the Defendant had taken mutually inconsistent stand *qua* the Receipt dated 10.10.2018. While in the Reply to the Legal Notice, the Defendant claimed that the Receipt had been executed as a security, in the Application seeking Leave to Defend, he relied upon the same document to contend that Rs.30,00,000/-, stood forfeited as earnest money. It further observed that no material had been placed on record to establish the alleged forfeiture. It was also noted that the property in question in any event, stood mortgaged with India Bulls Home Loans.

28. Accordingly, **the Application seeking Leave to Defend, was dismissed *vide* the impugned Order dated 08.11.2023**, and the Suit was decreed for Rs.58,00,000/- along with *pendente lite* and future interest @ 9% per annum.

29. Aggrieved thereby, the ***Appellant/Defendant*** has preferred the present Appeal.

30. The ***grounds of challenge*** are that the learned Trial Court failed to appreciate that the Plaintiff had himself mentioned about the existence of an Agreement to Sell dated 10.10.2018, distinct from the Receipt dated 10.10.2018, but had not placed the said Agreement on record.

31. It is contended that the Defendant had specifically pleaded that the sum of Rs.30,00,000/- represented earnest money, which stood forfeited in terms of the Agreement to Sell. The learned Trial Court erroneously proceeded on the premise that the Receipt dated 10.10.2018 was the only document executed between the parties, thereby rejecting the defence of forfeiture, without appreciating the pleadings.

32. It is further contended that the learned Trial Court failed to appreciate that *the defence raised by the Defendant disclosed several triable issues*, including the true nature of the transaction between the parties, the alleged repayment of the amounts advanced, the absence of any written Agreement regarding payment of interest, and that the cheque in question had been misused, in view of the close relationship between the parties.

33. It is submitted that these *issues required adjudication upon evidence and could not have been summarily rejected*, while dismissing the Application seeking Leave to Defend.

34. It is lastly contended that the learned Trial Court failed to correctly apply the principles governing grant of leave under Order XXXVII CPC. It is urged that the defence raised by the Appellant/Defendant disclosed *bona* *fide* triable issues, and at the very least, warranted grant of conditional leave to defend, particularly when the Defendant had asserted his willingness to pay the balance amount of Rs.4,00,000/- admittedly due, according from him.

35. The *Appellant/Defendant*, in the ***Written Submissions***, reiterated the grounds of Appeal and contended that the impugned Order and Decree suffers from legal and factual infirmities for the reasons urged in the Appeal.

36. The *Respondent/Plaintiff,* in the ***Written Submissions***, supported the impugned Order and Decree and submitted that the Defendant had admitted receipt of financial assistance of Rs.50,00,000/- and had taken inconsistent and mutually destructive stands in the *Reply to the Legal Notice* and the Application seeking *Leave to Defend* regarding the Bayana Receipt, the alleged forfeiture of Rs.30,00,000/-, repayment of the amounts advanced, payment of interest and the alleged coercion in execution of the Receipt.

37. It was further contended that no material had been placed on record to substantiate the alleged repayments or forfeiture and, therefore, the defence raised by the Appellant/Defendant was illusory and did not disclose any *bona fide* triable issue.

Submissions heard and record perused.

38. The ***principal question*** which arises for consideration is whether the defence raised by the Appellant/Defendant disclosed any *bona fide* triable issues as would entitle him to grant of Leave to Defend under Order XXXVII Rule 3(5) CPC.

I. Preliminary objection to Maintainability of Suit:

39. The threshold objection raised by the Appellant/Defendant may be briefly noticed. The objection that the Suit did not lie under Order XXXVII

CPC is misconceived, the Suit having been founded on a dishonoured Cheque, which is a bill of exchange within the meaning of Section 6 read with Section 5 of the Negotiable Instruments Act, 1881, and is therefore, squarely maintainable under Order XXXVII Rule 1(2)(a) CPC.

II. Whether the Court had no Territorial Jurisdiction to entertain the Suit:

40. The objection as to *territorial jurisdiction* is equally without substance. Admittedly, both the Plaintiff and the Defendant are residents of Naraina Vihar, New Delhi. The Cheque bearing No.000011 dated 09.03.2022 for Rs.58,00,000/-, on the strength of which the Summary Suit came to be instituted, was drawn on Kotak Mahindra Bank, Naraina Industrial Area, Phase-I, New Delhi, and was dishonoured at Delhi *vide* Cheque Returning Memo dated 10.03.2022. The financial assistance was extended, and the Receipt dated 10.10.2018 was executed, *at Delhi*. The entire cause of action, wholly, has therefore arisen within the territorial jurisdiction of the courts at Delhi.

41. Consequently, the objection regarding territorial jurisdiction was also rightly rejected, there being no material placed by the Appellant/Defendant to substantiate the same.

42. Likewise, the objection regarding Court Fee were also rightly rejected, there being no material placed by the Appellant/Defendant to substantiate the same.

III. Admission of Rs. 50,00,000/- Financial Assistance:

43. The Plaintiff/Respondent filed a Suit for recovery of Rs.58,00,000/- on the ground that Rs.50,00,000/- had been given from time to time to the

Defendant and his wife, in respect of which the cheque dated 09.03.2022 in the sum of Rs.58,00,000/- *(inclusive of interest)* was issued, which got dishonoured on 10.03.2022 on account of funds insufficient, giving rise to the institution of the present Suit.

44. Consequent to dishonour of the cheque, the Plaintiff issued a Legal Notice dated 08.04.2022, wherein he gave the background that in the year 2016, after his retirement, he had invested his retiral benefits in Mutual Funds and Fixed Deposit Schemes. The Defendant/Appellant's father, Sh. Ashok Kumar Khurana, was an old friend of the Plaintiff, who had died when the Defendant was young, and the Plaintiff had accordingly extended financial assistance to the Defendant, from time to time. It was asserted that a sum of Rs.30,00,000/- was paid by the Plaintiff, in acknowledgement of which a Notarised Receipt dated 10.10.2018, had been executed.

45. The Appellant/Defendant, in his Reply dated 20.04.2022 to the Legal Notice, stated: *"it is submitted that **although your client had advanced financial assistance to my client to the tune of Rs.50 Lakhs**. However, the same was merely a financial aid and not a loan per se."*

46. The ***first and foremost*** aspect which emerges is that ***the Defendant had admitted having received Rs.50,00,000/- from the Plaintiff.*** This amount of Rs.50,00,000/- has been bifurcated into two tranches i.e., Rs.30,00,000/- given initially, in respect of which the Notarised Receipt dated 10.10.2018 was admittedly executed and duly signed by the Appellant and his wife, and a further sum of Rs.20,00,000/-, advanced subsequently.

47. In Reply dated 20.04.2022 to the Legal Notice, while responding to the allegations ***regarding the Receipt dated 10.10.2018***, the Defendant/Appellant asserted in his preliminary submission that *"it is* *further important to mention here that mere perusal of the contents of the legal notice would show that although your client is not an authorized money lender or a non-banking Financial Cooperation, but still he* ***coerced my client in to signing a Bayana agreement merely as a security****".*

48. It is quite evident from the Defendant's own Reply to the Legal Notice that he admitted signing the Bayana Receipt and that too, as a security. Nowhere was it explained that it was a payment of Bayana under an Agreement to Sell for the property of the Defendant. *The only plea taken was that it was executed under coercion.* However, a mere bald assertion of coercion, without any explanation or material to support it, is a defence taken *in vacuum.* The said admission in the Reply confirms the payment of Rs.30,00,000/- from time to time, to the Defendant.

49. The Plaintiff claims that thereafter a sum of Rs.20,00,000/- was further disbursed, thereby making the total loan amount Rs.50,00,000/-. ***From the admissions made by the Defendant in the Reply dated 20.04.2022, it stands confirmed that he had received Rs.50,00,000/- in all from the Plaintiff.***

50. Though the financial assistance has been asserted to have been taken by the Appellant and his wife, it cannot be overlooked that the cheque was issued by the Appellant/Nitin Khurana in the name of the Plaintiff. Moreover, Section 43 of the Indian Contract Act, 1872 provides that *when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.*

51. Furthermore, it is settled principle of Contract Act that it only recognizes the principle of Privity of contract and not Privity of consideration. Therefore, even if money was taken by Appellant and his Wife, the issued Cheque is a binding contract only with the Appellant. Therefore, even if the financial assistance was taken jointly by the Appellant and his wife, the Plaintiff was fully entitled to proceed against the Appellant alone for recovery of the entire amount, as the privity of contract between the Plaintiff and the Defendant for recovery of Rs.50,00,000/- is established from the issued Cheque.

IV.Whether the Appellant is able to Prima Facie Substantiate his claim of Return of Rs. 46,00,000/-:

52. The Defendant, in his Reply to the Legal Notice, claimed that he had already repaid a sum of Rs. 46,00,000/-, through cash, as well as, online transactions, to the Plaintiff. However, the said assertion is unsupported by any bank transaction or other documentary evidence, and no particulars have been furnished as to the mode, date or manner in which the alleged Rs. 46,00,000/- were returned.

53. On the contrary, the Plaintiff has admitted receipt of only Rs. 9,20,000/- from the Defendant, and the Defendant has failed to substantiate his claim that a sum of Rs. 46,00,000/- had been returned.

54. The Defendant also sought to explain withholding of the alleged balance of Rs.4,00,000/-, by asserting that gold articles belonging to his mother and wife, to the tune of Rs.30,00,000/-, had been illegitimately retained by the Plaintiff. *Firstly*, if Rs.30,00,000/- had been forfeited as earnest money, there was no occasion for the Plaintiff to additionally retain jewellery as security. Secondly, Aside from this assertion, no date, description or documentation of the alleged jewellery has been placed on record, making this defence inherently improbable.

55. *Thirdly*, if jewellery worth Rs.30,00,000/- was to be adjusted towards the first tranche of Rs.30,00,000/- for which the *Bayana* Receipt was executed, then that amount could not simultaneously constitute earnest money under an Agreement to Sell, liable to forfeiture. ***The complete falsity of the Appellant's defence is thus, evident.***

V. Defence of the Agreement-to-Sell and Forfeiture of Rs.30,00,000/-:

56. Significantly, in his Application seeking Leave to Defend, the Defendant put forth *an entirely different explanation*. He stated that for the sum of Rs. 50,00,000/- taken as financial help, it was decided that Rs. 30,00,000/- would be treated as advance/earnest money for the sale-purchase of property bearing No. C-5, UGF, Naraina Vihar, New Delhi, and that the parties entered into an Agreement to Sell dated 10.10.2018 and also executed a Bayana Receipt of the same date, i.e. 10.10.2018, wherein the receiving of Rs. 30,00,000/- had been acknowledged, *vide* a Receipt.

57. The Defendant asserted that as per the terms of the Agreement to Sell dated 10.10.2018, Rs.30,00,000/- were paid as advance/earnest money, the *total sale consideration was agreed to be Rs.2.50 crores*, and *the balance payment was to be made within six months*. Since the Plaintiff allegedly failed to honour the terms of the Agreement, ***the earnest money of Rs.30,00,000/- stood forfeited.***

58. The falsity of this defence is evident from the Defendant's own self-contradictions. ***First and foremost***, there is no mention in the Reply to the Legal Notice, that the parties ever entered into any Agreement to Sell. On the contrary, the Defendant specifically denied execution of any such Agreement to Sell. The Defendant/Appellant stated in para 3 of the Reply on merits:

> *"It is vehemently denied further to secure the said amount of Rs. 30 Lakhs my client entered into an agreement to sell with your client with respect to his residential premises bearing no. C-5, Upper Ground Floor, Naraina Vihar, New Delhi-110028, as alleged."*

59. The only averment made in the Reply, while admitting receipt of Rs.50,00,000/- from the Plaintiff, is that a Receipt dated 10.10.2018 was executed under coercion. There is no whisper of any Agreement to Sell, any sale consideration of Rs.2.50 crores, any period of six months for payment, or any forfeiture of earnest money.

60. Further, the story of Rs.30,00,000/- being earnest money under an Agreement to Sell liable to forfeiture, *found no mention whatsoever in the Reply to the Legal Notice.* Pertinently, no such Agreement to Sell was ever claimed to be in existence in the Reply, nor was any such document filed, along with the Leave to Defend Application.

61. It is also significant that the Agreement to Sell was allegedly to be honoured within six months of its execution, yet there is not an iota of evidence nor a single contemporaneous document or communication, including the Reply dated 20.04.2022, making any reference to the existence of such an Agreement to Sell. From the documents on record and the Defendant's own Reply, it is manifest that no Agreement to Sell, as now

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sought to be relied upon by the Defendant, ever existed. No notice of forfeiture of alleged earnest money was ever given. ***Consequently, the plea that a sum of Rs.30,00,000/- stood forfeited thereunder, is wholly untenable.*** This is nothing but a sham defence, disproved by the documents and the Defendant's own admissions in the Reply dated 20.04.2022.

62. The falsehood of the defence further emerges from the Appellant's own admission in his Reply, stating that he had paid more than Rs.46,00,000/- and that only a balance of Rs.4,00,000/- remained, with the last payment having been made in March, 2022. Had the amount of Rs.30,00,000/- been forfeited as earnest money way back in 2018-19, there could have been no question of repayments aggregating to Rs.46,00,000/- being made, as asserted by the Defendant. *His own contradictory explanations prove that there was neither any Agreement to Sell nor could there have been any forfeiture of Rs.30,00,000/-.*

VI. Whether the Appellant had any liability to pay the Interest:

63. The next defence was that the amount was not a loan, *but financial help and was interest-free*. Whatever be the nomenclature, there is nothing on record to show that it was an amount intended to be given without interest. Pertinently, the Appellant himself placed on record a document wherein entries described as *"July Int."*, *"August Int."* and *"September Int."* appear, with an amount of Rs.81,500/- against each entry. His own document therefore, reflects that there was an understanding for payment of interest.

64. The Plaintiff has asserted that in the meeting held in March 2022, the parties agreed that Rs.12,00,000/- was payable as interest on Rs.30,00,000/-

for the period October 2018 to February 2022, and Rs.5,20,000/- as interest on Rs.20,00,000/-. *After adjustment of Rs.9,20,000/- already received, the balance of Rs.58,00,000/- was crystallised, for which the cheque dated 09.03.2022 was issued, which got dishonoured on 10.03.2022.*

VII. Whether the Cheque in question was given Blank and was misused by the Plaintiff:

65. The Appellant asserted that when the cheque was dishonoured, he was shocked to find his signatures, thereon. He claimed that it was a blank cheque handed over in 2018 for payment of utility bills, which had been fabricated by the Plaintiff, and that the amount thereon was not filled in by him.

66. In his Reply dated 20.04.2022, the Defendant had stated that four to five blank signed cheques were in the possession of the Plaintiff for payment of electricity, water and other bills, and that the impugned cheque was one of those. He further claimed that the Plaintiff was still in possession of few cheques, pertaining to the Defendant and considering the mala fide intentions, it was probable that the other cheques might be misused.

67. Again, this explanation is wholly absurd. There is no cogent basis to explain why the Plaintiff would pay the utility bills of the Defendant when, in fact, he had been extending financial assistance to the Defendant from time to time. Further, despite asserting that multiple blank signed cheques were in the possession of the Plaintiff, the Defendant never issued any notice, complaint or communication demanding return of these alleged cheques, either before or after receipt of the Legal Notice. There is also no assertion that the other alleged cheques were ever used by the Plaintiff.

Also, there is no Letter to the Bank, written to stop payment of those alleged cheques even after dishonour of this Cheque, which any person of ordinary prudence would do, in case these assertions were correct.

68. Even if the defence that it was a blank cheque bearing only the Appellant's signature is accepted, the legal position is well settled. In *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197, the Supreme Court held that where a signed blank cheque is voluntarily handed over by the drawer to the payee, the payee is entitled to fill in the amount for which the drawer is liable, and such filling in does not constitute a material alteration vitiating the cheque. The liability of the drawer is not extinguished merely because the particulars were filled in by the payee.

69. Accordingly, even on the Appellant's own case, the defence of misuse of a blank cheque, does not disclose a *bona fide* triable issue.

Conclusion:

70. Therefore, from the aforesaid discussion, it emerges that there are clear admissions by the Defendant about having received a sum of Rs.50,00,000/- from the Plaintiff/Respondent and about his obligation to pay interest, which stands crystallised in the cheque dated 09.03.2022 for Rs.58,00,000/-, which dishonoured on presentation on 10.03.2022.

71. The defence taken by the Defendant is replete with contradictions. From the Reply to the Legal Notice, and the wholly contradictory and self-defeating defence in the Leave to Defend Application, it clearly emerges that the Defendant admitted having received Rs.50,00,000/- from the Plaintiff and has not been able to establish return of this loan amount either in cash or through any bank transaction, except for Rs.9,20,000/-, which the Plaintiff has admitted receiving.

72. The defence disclosed in the Leave to Defend Application by the Defendant/Appellant was illusory and did not disclose any substantial defence; it is indeed was sham and moonshine, as rightly held by the Ld. District Judge, while dismissing the Application.

73. Learned District Judge rightly decreed the Suit of the Plaintiff, *vide* the impugned Judgment and Decree dated 08.11.2023. ***The present Appeal is accordingly, dismissed***.

74. Pending applications, if any, are also disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 24, 2026
N