2026:DHC:7009

$~66

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

% ***Date of decision: 10th August, 2026***

\# **CNR No. DLHC010365092026**

\+ **RFA 811/2026, CM APPL. 52507/2026, 52509/2026**

RAKESH SRIVASTAVA
S/o Late Sh. K.J. Srivastava,
Working as Enquiry and Reservation Clerk (E&RC),
IRCA Building, Chamsford Road, New Delhi-110055.
Also at: H.No.3-D, Railway Colony, Tughlakabad, Delhi-110044.
.....Appellant

Through: Counsel for Appellant (appearance not given)

versus

SH. PRADEEP YADAV
S/o Sh. Megh Raj,
R/o JQ-7A, Railway Colony, Basant Lane, Delhi-110055.
.....Respondent

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

CM APPL.52508/2026 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application is disposed of accordingly.

3. **Regular First Appeal** under Section 96 read with **Order XLI Rule 1 read with Section 151** of the Code of Civil Procedure, 1908, *(hereinafter referred to as 'CPC')*, has been filed on behalf of the Appellant against the Judgment dated 30.04.2026 whereby the Civil Suit bearing **CS DJ No. 402/2023** filed by the Plaintiff/Respondent, has been decreed, **for a sum of Rs.6,00,000/- along with the *pendente lite* and future interest @9% p.a.**

4. ***The facts in brief*** are that the Appellant/Defendant, Mr. Rakesh Srivastava was known to the Plaintiff, who approached him on 25.02.2020 to seek a **loan of Rs.8,00,000/-** for treatment of his ailing mother, as well as, for his certain personal requirements. The Plaintiff arranged Rs.6,00,000/- and gave it to the Defendant, in cash on **27.02.2020** as a friendly loan, on an assurance that the Defendant would return the money on or before 2022.

5. The Plaintiff thereafter, visited the ***office of the Defendant*** in March, 2022, to ask for the return of the friendly loan, but he sought time by expressing financial difficulties. He, however, gave a **cheque bearing No.314023 dated 02.05.2022** for Rs.6,00,000/-, drawn on ICICI Bank, Rajinder Nagar Branch, New Delhi, in discharge of his liability.

6. The cheque, on presentation on 10.05.2022 was returned unpaid *vide* **Return Memo dated 11.05.2022**, with the remarks ***"image not clear, present again with paper"***. The Plaintiff upon enquiry from the Banker, was informed that since it was an old cheque, it would not be cleared even on re-presentation.

7. Thereafter, the Plaintiff again demanded the money from the Defendant, but he gave no satisfactory reply. A **Legal Notice dated 26.05.2022** was served upon the Defendant by speed post, which was

delivered on 27.05.2022, despite which the Defendant failed to pay the loan amount.

8. Consequently, the **Suit was filed for Recovery of Rs.6,00,000/- along with the *pendent lite* and future interest @24% p.a.**

9. The Defendant in his ***Written Statement***, took the preliminary objection that the Plaintiff has not approached the Court with clean hands and that the suit was founded on ***a forged and fabricated cheque and disclosed no cause of action*** and was liable to be rejected under ***Order VII Rule 11 CPC***. It was also claimed that Ld. Trial Court *lacked territorial jurisdiction* as the Defendant was resident of Tughlakabad, Delhi while the suit had been filed in the New Delhi District.

10. **On merits**, the Defendant denied that he had borrowed any money from the Plaintiff. He took a defence that the cheque in question was ***an old cheque, which had been lost from his office***. It was thereafter, found to have been misused by the Plaintiff, on the basis of which, the present fabricated Suit has been filed.

11. The Defendant stated that he is a well-established Government employee and there was *no occasion for him* to seek a loan from the Plaintiff. Furthermore, his father was also employed with the Railways, who had died in harness, consequent to which, his mother was receiving family pension along with the medical benefits at the railway's hospitals and other empanelled hospitals across India.

12. A technical objection was taken that under the **Income Tax Act, 1961,** the cash transaction exceeding Rs.2,00,000/-, are prohibited. The Defendant also ***denied*** *t*he service of Legal Notice and claimed that the Suit was liable to be dismissed.

13. The Plaintiff in the ***Replication***, reaffirmed the assertions made in the Plaint and denied the allegations made in the Written Statement.

14. Issues were framed on ***vide* Order dated 31.05.2024**, which are as under:-

> *(i) Whether the plaintiff is entitled to a decree of Rs.6,00,000/- against the Defendant, as prayed for? OPP*
>
> *(ii) Whether the Plaintiff is entitled to pendent lite and future interest, if yes, at what rate? OPP*
>
> *(iii) Relief.*

15. The **Plaintiff examined himself as PW-1**, tendering his evidence by way of affidavit as Ex. PW1/1, and relied upon the copy of his Aadhar card as Ex. PW1/A, the original cheque as Ex. PW1/B, the cheque return memo dated 11.05.2022 as Ex. PW1/C, the legal notice dated 26.05.2022 as Ex. PW1/D, the postal receipt as Ex. PW1/E and the India Post tracking report as Ex. PW1/F.

16. **The Defendant appeared as DW-1** and tendered his affidavit of evidence, exhibited as Ex. DW1/A. The Defendant did not rely upon any documentary evidence, in support of his defence.

17. Upon appreciation of the evidence, the learned **District Judge** concluded that the cheque in question had indeed been issued by the Defendant. Although the Defendant claimed that the cheque had been misplaced, his evidence did not substantiate this defence**.** It was accordingly, held that the Plaintiff had established the advancement of the loan of Rs.6,00,000/-, which was further supported by the issuance of the cheque for the same amount. *The suit was, therefore, decreed for Rs.6,00,000/- along with pendente lite and future interest @9% p.a.*

18. **Aggrieved by the aforesaid Judgement and Decree, the Appellant filed the present Appea**l to set aside of the Impugned Judgment and Decree and in the alternative, prayed that the Suit may be remanded to the learned Trial Court, for fresh consideration.

19. The ***grounds of challeng*e** are that his defence of the cheque being misplaced, was established from the circumstances and material emerging from the Respondent's own evidence. The presumptions under **Sections 118(a) and 139 of the Negotiable Instruments Act, 1881**, has been erroneously invoked, without appreciating that the burden of rebutting the same, rested upon the plaintiff, on the touchstone of preponderance of probabilities. Reliance is placed on *Rangappa v. Sri Mohan*, (2010) 11 SCC 441, *Kumar Exports v. Sharma Carpets*, (2009) 2 SCC 513 and *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418.

20. The Appellant further contended that the learned District Judge itself found the Respondent's financial capacity and source of funds ***to be doubtful***, particularly in view of his modest financial profile and absence of supporting documentary evidence.

21. It is further claimed that the Appellant, being a permanent Government employee with an assured monthly income, ***had no apparent occasion*** or need to seek a friendly loan of Rs.6,00,000/- from the Respondent. Having noticed these circumstances, the learned Trial Court erred in holding that such ***doubt did not*** accrue to the benefit of the Appellant merely because the Suit was founded upon the cheque.

22. It is asserted that once a probable defence is raised regarding the existence of the underlying debt and the financial capacity of the Respondent to advance the alleged amount, the statutory presumption stands

rebutted and the burden ***shifted*** upon the Respondent to establish the existence of the legally enforceable debt. Reliance is placed on *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 and *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418.

23. The Appellant has also asserted that the alleged contradiction in the Plaintiff's case, in respect of the circumstances in which the cheque was handed over, has ***not been rightly appreciated***. The learned Trial Court erred in treating the contradiction *as more apparent than real,* despite they going to the root of the transaction and the genesis of the cheque.

24. The adverse inference drawn from his failure to lodge a police complaint or issue stop-payment instructions, upon allegedly discovering misuse of the cheque, is misplaced as **the cheque had been dishonoured on 11.05.2022, rendering any subsequent stop-payment instruction, futile.**

25. Moreover, the reason recorded for dishonour of cheque, ***was consistent*** with the Appellant's defence that the cheque was an old cheque leaf and it had not been freshly issued towards the alleged liability in May, 2022.

26. It was submitted that the inconsistency in the Plaintiff's own pleadings and deposition and his cross-examination, have not been considered. Reliance is placed on *Basalingappa v. Mudibasappa*, (Supra).

27. Furthermore, the service of Legal Notice could not have been presumed by reference to ***Section 27 of the General Clauses Act, 1897***, notwithstanding his categorical denial of receipt, on oath. It was required to be determined with reference to the evidence led in the present proceedings.

28. Reliance has been placed on *C.C. Alavi Haji v. Palapetty Muhammed*,

(2007) 6 SCC 555, to assert that the proceedings under **Section 138 of the Negotiable Instruments Act**, could not have been mechanically applied to the civil suit.

29. The *award of pendente lite and future interest at 9% per annum,* is also challenged on the ground that there was no oral or written Agreement between the parties, about any rate of interest. **The discretion under Section 34 CPC was exercised, without sufficient regard to the disputed nature of the underlying transaction.**

30. The Appellant also disputes the territorial jurisdiction of the learned Trial Court, maintaining that he was residing at Tughlakabad, Delhi.

31. The Respondent, in the ***Written Submissions***, reiterated the case advanced before the learned Trial Court.

32. It was further submitted that the doubts concerning the Respondent's financial capacity related, at the highest, to the antecedent cash transaction and did not displace the statutory presumption arising from the cheque, once its execution stood established. Reliance was placed on *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197.

33. It was submitted that there **was no merit** in the present Appeal.

Submissions heard and the record perused.

34. The Plaintiff had asserted that he had given a friendly loan of Rs.6,00,000/- to the Defendant, ***on his asking*** on 27.02.2020 which, the Defendant had undertaken to return by February, 2022 ***but he failed to do so***. Thereafter, in March 2022, the Plaintiff approached the Defendant and demanded repayment, pursuant to which the Defendant issued ***cheque bearing No.314023 dated 02.05.2022*** for a sum of Rs.6,00,000/-, Ex. PW-1/B. Though, on presentation of the same, it was dishonoured *vide* **Return**

Memo dated 11.05.2022, Ex.PW-1/C with the remarks ***"image not clear, present again with paper***."

35. The Defendant, in his ***Written Statement*** as well as in his testimony, denied having availed any loan from the Plaintiff. However, in seeking to explain the issuance of the cheque, he asserted that the same had been misplaced from his office. *Significantly,* his own evidence shows that he did not dispute that the cheque belonged to him or that it bore his signatures; he admitted in his cross-examination that the signatures on the Cheque, appeared to be his. **His *only assertion was that the cheque had been misplaced.***

36. Pertinently, the Appellant has ***not disclosed*** as to when and how, the cheque got misplaced and when it came to his knowledge that the cheque had been misplaced.

37. Furthermore, there is no assertion that the Plaintiff had any access to his office or explanation as to how the Plaintiff came into possession of the said cheque. Such gaps in the assertions of the Defendant, lead ***to one and only conclusion*** that it was the Defendant, who had handed over the cheque to the Plaintiff in lieu of the loan of Rs.6,00,000/-, which had been taken by him.

38. It is pertinent to refer to the Bank Return Memo, Ex.PW-1/B wherein the cheque had been returned on account of being an old cheque and on the ground of ***"image not clear, present again with paper."***

39. While the Defendant had asserted that this proves that the cheque was an old cheque, which corroborates his case, but it is otherwise***. The cheque had been given by the Defendant and it was for him to explain how old the cheque was.***

40. Furthermore, it could have been easily done by him by presenting the cheque book from which the cheque in question, had been issued. It is also a normal practice for a person issuing a cheque, to make a ***corresponding entry in the index of the cheque book***. Had the cheque gone missing, there is no way that the Defendant would not have come to know about it.

41. It has been rightly held by the learned District Judge that though the Defendant had tried to wriggle out of the cheque which pertained to him, by asserting that it was misplaced, but had failed to corroborate his claim by any cogent evidence. ***The only conclusion from the evidence of the Plaintiff and the Defendant that can be drawn is that in fact, the Defendant had handed over the cheque of Rs.6,00,000/- to the Plaintiff***.

42. Even if the claim of the Defendant, is accepted that it was a blank signed cheque given by him to the Plaintiff, ***Section 118 (a) and 139 of the Negotiable Instruments Act, 1881, demolish his defence***.

43. Section 118(a) of the Negotiable Instrument Act, 1881, provides for the presumptions as negotiable instruments in respect of the consideration, date, time of transfer, endorsement and the holder being the holder in due course unless the contrary is proved.

44. Likewise, Section 139 of the Negotiable Instruments Act, 1881, further provides a presumption in favour of holder of the cheque that it was received by him in discharge of his debt or liability.

45. This aspect was explained in the case of *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197, 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.

3*4. 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.****"*

46. It was further held in Bir Singh (supra) that ***once the execution of a signed cheque is established, the statutory presumption operates in favour of the holder, subject to the rebuttal by the drawer through the cogent circumstances showing that the cheque had not been issued in discharge of a legally enforceable liability***

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

48. Once it is established that the cheque had been handed over by the Defendant, ***he cannot deny*** the liability on the specious grounds as claimed

by him; rather the cheque ***corroborates the case of the Plaintiff*** that the Defendant had been given a friendly loan in discharge of which, the impugned cheque Ex.PW-1/B had been issued.

49. The Defendant had further tried to rebut his liability by asserting that he was a Government employee and was well placed and there was no financial constraints for him, to take the loan. His mother was also getting a family pension and there was no occasion for the loan to have been taken.

50. However, merely because the Defendant was employed, ***cannot be a circumstance*** to say that he could not have required a lump sum amount of Rs.6,00,000/-, for his financial exigency. The Defendant's mere assertion that he had sufficient funds, ***does not discredit the taking of loan by him especially in the light of the cheque, which has been proved to have been issued by him.***

51. The Appellant sought to contend that while the Plaintiff's pleaded case in Paragraph 4 of the plaint was that the cheque was handed over when repayment was demanded in March, 2022, however in the same breath, the Plaintiff deposed in his cross-examination dated 14.11.2024 that post-dated cheque had been handed over at the time of giving the loan in 2020. **When the cheque having signatures of the Appellant, has been held to have been given by the defendant, the time of handing over the cheque cannot be considered as a contradiction going to the root of the matter.**

52. The Defendant himself admitted in his cross-examination that the cheque belonged to him and that he had handed it over to the Plaintiff. The fact that the cheque was subsequently returned with the remark "***image not clear, present again with paper***" is also consistent with the cheque being an old cheque leaf. *Thus, the discrepancy regarding the precise point in time*

when the cheque was handed over does not, by itself, discredit the Plaintiff's case regarding the underlying liability.

53. The service of **Legal Notice** has also been questioned by the Appellant. The Appellant did not dispute that the notice had been addressed to his correct and subsisting address and offered no explanation for its alleged non-receipt.

54. The postal tracking report, Ex. PW1/F, records delivery on 27.05.2022. In these circumstances, the presumption of due service under **Section 27 of the General Clauses Act, 1897** stands adequately supported by the material on record. **The bare denial of receipt does not displace it.**

55. The statutory presumption of service, coupled with the postal tracking record showing delivery at the undisputed address, is sufficient on the facts of the present case. **The finding of due service consequently calls for no interference.**

56. Furthermore, merely because the image was not clear, cannot lead to a necessary inference of it being old. ***The entire onus was on the Defendant to which he could have easily discharged by proving the cheque book to which the cheque leaf pertained.*** The learned District Judge ***had rightly concluded*** that the Defendant was liable to return the loan of Rs.6,00,000/- taken by him from the Plaintiff.

57. The Appellant ***has challenged*** the territorial jurisdiction of the learned Trial Court on the ground that he was a resident of Tughlakabad. However, this objection was not raised before the learned Trial Court.

58. In any event, the Plaintiff was residing at ***Railway Colony, Basant Lane, Delhi,*** from where the Defendant had collected the loan, and the cheque was presented at ***Rajinder Nagar Branch***. ***Thus, part of the cause***

of action arose within the jurisdiction of the learned District Judge; and the objection is without merit.

59. The **challenge to the award of interest** also does not merit acceptance. **Section 34 CPC** confers a discretionary power to award *pendente lite* and post-decree interest, independent of any contractual rate. In *Sandeep Goel v. M/s Zavenir Developers Pvt. Ltd*.,2026 SCC OnLine Del 4613, this Court, following *Central Bank of India v. Ravindra*, (2002) 1 SCC 367, ***reiterated that such discretion must be exercised fairly and judiciously and not on arbitrary or fanciful considerations.***

60. ***The absence of an agreed rate was therefore, not a bar to such an award.*** The learned Trial Court declined the claimed rate of 24% per annum and awarded simple interest at 9% per annum. ***No material has been shown to establish that the rate awarded was arbitrary or that the discretion under Section 34 CPC was improperly exercised.***

61. Accordingly, this Court finds no sufficient ground to interfere with the decree for recovery of Rs.6,00,000/-, together with interest as awarded.

62. The Judgment and Decree dated 30.04.2026 passed by the learned Trial Court, is upheld.

63. **The Appeal is accordingly, dismissed.** Pending applications, if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 10, 2026/RS