



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

% *Reserved on: 14th January, 2026*

Pronounced on: 10th March, 2026

+ **RFA 831/2023, CM APPL. 52187/2023 (Stay)**

RAJ KUMAR SUKHWANI

S/o Shri Vasudev Sukhwani,
R/o Sea-02, 12AP2, 12th Floor,
Tower 2, Sea Court Apartment,
Jaypee Greens, G-Block,
Surajpur Kasna Road, Greater Noida, U.P.

..... Appellant

Through: Mr. Shiv Charan Garg & Ms. Chanchal
Garg, Advocates.

versus

MANJU DAYAL

W/o Shri Pawan Dayal,
R/o H.No. 2332, Murliwala Kuan,
Subzi Mandi, New Delhi-110007.

..... Respondent

Through: Appearance not given.

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(2) of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellant, to challenge the Order dated 30.05.2023 of the Learned Additional District Judge-02, Central, Delhi whereby the *Application under Order 12 Rule 6 CPC*, has been allowed and Suit of the Plaintiff for *recovery* of Rs. 58,80,000/-, has been decreed.



2. The Plaintiff/ Respondent filed a *Suit for Recovery* of Rs.58,80,000/-. The *brief facts* of the case are that the Appellant/Defendant had friendly relations with the husband of the Plaintiff/Respondent, who had requested the plaintiff to lend him a friendly loan of Rs.35,00,000/-, as he was in dire need of money due to a financial crisis in his business. On assurance of repayment of the loan and considering the friendly relations between the Appellant/Defendant and her husband, the Respondent/Plaintiff advanced Rs.10,00,000/- on 03.08.2017, Rs.5,00,000/- on 04.08.2017 and Rs.20,00,000/- on 05.08.2017 to the Appellant/Defendant, as loan. The Appellant/Defendant had promised to repay the amount within one year. It was also alleged by the Plaintiff that Appellant/Defendant had also taken various loans from the Respondent/Plaintiff, for which the Appellant had given Title Deeds of his property, to the Plaintiff.

3. The Plaintiff/Respondent claimed that Defendant/Appellant failed to repay the loan, despite repeated requests and reminders. After much persuasion, the Appellant handed over three cheques bearing no.343690, 343691 and 343692 for Rs.10,00,000/-, Rs. 20,00,000/- and Rs.5,00,000/- respectively, drawn on Punjab National Bank, Shakti Nagar Branch, New Delhi to the Respondent/Plaintiff. However, when the Respondent/Plaintiff presented the said cheques for encashment, all the cheques were returned unpaid with the remarks "*Funds Insufficient*" vide Return Memo dated 06.08.2020. The Plaintiff gave a legal Notice dated 11.08.2020 and thereafter, filed the Suit for recovery of Rs. 58,80,000/- along with *pendente lite* and future interest @18% per annum.

4. The **Defendant/Appellant, in his Written Statement**, took the defence that there is no loan Agreement between the parties. In fact, in July,



2017, the Plaintiff expressed her desire to purchase Flat the No. 0701, 7th floor, Tower no.16, Unitech Horizon, Greater Noida, U.P., which was allotted to the Appellant and its possession was handed over to the Appellant in the year 2012. The Appellant and the Respondent consequently, entered into an Agreement regarding sale and purchase of the said Flat, for consideration of Rs.75,00,000/-. In furtherance of the said alleged Agreement, the Plaintiff had paid a sum of Rs.35,00,000/- to the Defendant in August, 2017. It was decided that if the Flat was not found convenient by the Plaintiff *and was not desirous of fulfilling the deal, she could get the cheques encashed*, or then the Defendant/Appellant would return the amount back to the Plaintiff.

5. It has been claimed that in August, 2018, the Respondent agreed to purchase the Flat and to pay the entire remaining amount, within one month. She also agreed to return the cheques. The Appellant/Defendant further asserted that due to the COVID-19, the rates of the Flat started to fall drastically. Hence, Respondent neither paid the remaining consideration amount i.e. Rs.40,00,000/- nor returned the three Cheques to the Appellant.

6. The Appellant/Defendant has also opposed the contentions of the Respondent/Plaintiff that any Loan was taken by him. No ITR records have been filed by the plaintiff, to show that she had given a sum of Rs.35,00,000/- to the Defendant.

7. The **Plaintiff/Respondent in his Replication** averred that the Appellant has fabricated a false story, to avoid his liability. The Plaintiff/Respondent has reiterated the assertions made in the Plea.

8. The Plaintiff had also emphasized, that in Para Nos.1 (D) & (E), of Defendant's Written Statement, he has unambiguously admitted that he



received the amount of Rs.35,00,000/-, from the Plaintiff/Respondent. Moreover, the Defendant has not filed a single document on record, to support his allegation of sale of the Flat to the Respondent bearing Flat No.0701, 7th Floor, Tower No. 16, Unitech Horizon, Greater Noida, U.P.

9. The Ld. District Judge, after appreciation of the evidence, held that the Defendant has admitted receiving the amount of Rs.35,00,000/- from the Plaintiff and having issued three cheques to her. The Defendant's averments that there was an Agreement between the parties regarding sale and purchase of Defendant's property, appears to be sham and moon shine. The Application Under Order XII Rule 6 CPC was allowed. Hence, the Suit of the Plaintiff was decreed in the sum of Rs.58,80,000/-, though no interest was granted.

10. Aggrieved by the Decree, present Appeal has been filed. The grounds of challenge are that the Ld. Additional District Judge has exceeded his jurisdiction and passed the impugned Order dated 30.05.2023, without considering the facts and circumstances. It is asserted by the Appellant/Defendant that in July 2017, the Plaintiff/Respondent had desired to buy the above-mentioned Flat and it was agreed that the Plaintiff/Respondent will purchase the suit Flat for Rs.75,00,000/-.

11. Secondly, as Appellant/Defendant further agitated that there was no Loan Agreement between the parties and the Plaintiff has concocted a story in this regard. No document had been filed by the Plaintiff to show that the aforesaid cheques were given as a blank cheque to the Plaintiff. Moreover, the Plaintiff did not send any Notice to the Plaintiff for return of the three cheques, despite which the story of Loan, as projected by the Plaintiff, has been mechanically believed by the Ld. Trial Court.



12. The Plaintiff in his reply to the Appeal, has submitted that in Paragraph Nos.1 (D) & (E), of Defendant's Written Statement, he has unambiguously admitted that he received the amount of Rs. 35,00,000/-from the Plaintiff/Respondent. Further, **no written Agreement has been put on record by the Appellant to support the claim of Agreement between the parties** for the sale purchase of the suit property, for Rs.75,00,000/-.

Submissions heard and record perused.

13. Essentially, the background of the dispute is that there was a monetary transaction of Rs.35,00,000/- between the parties, and this amount was received by the Defendant/Appellant. While the Plaintiff asserted that it was a simple Loan transaction, the Appellant/Defendant that it was the money given for purchase of the suit property for Rs.75,00,000/-, from which the Plaintiff subsequently, rescinded.

14. Pertinently, the Defendant/Appellant in the Para no.1 (D) & (E) of the Written Statement has categorically admitted that he has received the money and was waiting for the remaining amount of Rs.40,00,000/- from the Plaintiff/Respondent with respect to the alleged sale Agreement. However, there is no document to support the Appellant's claim that there has been any Agreement between the parties for the sale-purchase of the suit Flat.

15. The relevant Paragraphs of the Written Statement read as under:

“D. That in the month of July, 2017, the petitioner showed her desire to purchase the said flat and it was mutually agreed that she will purchase the said flat for Rs. 75,00,000/- and in terms of the said settlement, the petitioner paid a sum of Rs. 35,00,000/- in August, 2017. The defendant had good relation with the petitioner, hence, it was decided that if the said flat would not be convenient, then, the defendant would



return the amount, hence, in pursuance of the said commitment, the defendant gave 3 cheques with the assurance that if the petitioner is not desired for this deal then, the same would be got encashed within 1 (One) month, however, prior intimation of deposit of cheque, not less than 72 hours would be given to the defendant, The said cheques were given in July, 2018.

E. That the plaintiff agreed in August, 2018 that she would make the entire payment of the said flat within 1 month and also agreed to return the cheques, however, she did not pay the remaining amount and always sought time for balance payment as well as return of the cheques. The defendant always accommodated with the plaintiff being having good relation with her husband, and having family relation.”

16. Moreover, The Appellant himself has stated that it was agreed between the Parties that if the Plaintiff eventually did not intend to purchase the Flat, the money would be returned. Therefore, even if the defence of the Appellant is considered, there is an unequivocal admission of having taken Rs.35,00,000/-. Even though there is no Agreement to Sell executed between the Parties, but then, it is also admitted by the Defendant that the plaintiff did not intend to buy the Flat. It is further admitted that the three Cheques had been given by him, *as an assurance*. Further, admittedly, the Appellant/Defendant is in the possession of the suit Flat, which completely belies his theory of an alleged Agreement to Sell.

17. If indeed it was an Agreement to Sell, then the defendant had no reason to secure this amount by giving the three Cheques, which on presentation, got dishonoured. Clearly, the main dispute of this case is of purely monetary transaction between the parties, which was categorically admitted by the Defendant in Para Nos.1 (D) & (E) of his Written Statement.



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18. In the case of *PPA Impex Pvt. Ltd. Vs Mangal Sain Metal*, 166 (2010) DLT 84, it has been held that if the defence amounts to be a sham and moonshine, it should be summarily dismissed by the Court.
19. The Ld. District Judge has rightly decreed the Suit under Order XII Rule 6 CPC, in the light of unambiguous admissions of the Defendant. It is held that there is no infirmity in the Impugned Order dated 30.05.2023, granting the recovery of Rs.58,80,000/-, with no orders to interest.
20. There is no merit in the Appeal, which is hereby, dismissed. The pending Applications are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 10, 2026/R