



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

%

*Reserved on: 24th March, 2026
Pronounced on: 10th April, 2026*

**RFA 480/2025, CM APPL. 39351/2023, CM APPL. 12512/2023 &
CM APPL. 55182/2025**

1. **MOHD ABID**Appellants
S/O MD. SALEEM

2. **MS. KISHWARI**
W/O MD. ABID

BOTH RESIDENTS OF
AJMER BASTI, BHIWANI ROAD
NEAR RAILWAY CROSSING/PHATAK,
JIND, HARYANA- 126102

Through: Mr. Anjani Kumar Singh, Mr. Saroj
Kumar Singh and Mr. Rajesh Sharma,
Advs.

VERSUS

RAJESH KUMAR JAINRespondent

S/O LATE SH. S. P. JAIN

RESIDENT OF:

B-13/S1 DILSHAD GARDEN, DELHI

NOW AT: 2/1 ANSARI ROAD,

DARYAGANK

CURRENT ADDRESS:

2898 URBAN ESTATE, JIND

(HARYANA)

Through: Respondent in person.



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

1. Regular First Appeal under Section 96 read with Order 41 CPC has been filed against the Judgement and Decree dated 05.12.2022 (*hereinafter referred to as 'Impugned Order'*) in Suit for Recovery of Rs.75,20,182/- along with pendent lite and future interest @ 6% per annum filed by the Respondent Rajesh Kumar Jain, under Order XXXVII CPC.
2. The Respondent Doctor Rakesh Kumar Jain filed a Suit No. CS 617/2022 for Recovery of amount Rs.75,20,182/- along with pendent lite and future compound and penal interest.
3. The *facts in brief as narrated in the Plaintiff* was that the Plaintiff was a Senior Doctor and Specialist Orthopaedic Surgeon engaged in private practice in Delhi and NCR and was visiting Jind, Haryana regularly to give company to his widow septuagenarian mother, then living at the second camp/temporary address, as reflected in the Memo of Parties.
4. The *Defendant No.1* was engaged in skilled work of manufacturing utensils out of aluminium scrap and he also used to purchase some utensils from him. He was known to the Plaintiff for about two years, since the dispute arose. Some money as casual / short terms loan was given by the Plaintiff from time to time, to enable him to stand on his feet and to start independent work, as he had been working under a Contractor till then and had meagre earnings.
5. The Defendants approached the Plaintiff for the first time on



01.07.2013 for a loan of Rs.1,50,000/-, to meet urgent purchases / expenses towards the raw material of aluminium scrap as he did not qualify for any bank loan nor was anybody willing to help him. The Defendant No.1 even promised to hand over the Title Deeds of alleged land owned by him in Bihar. He was given a cash loan of Rs.1.5 lakhs along with interest @ 3% per month till date of actual payment and Penal Interest of 2% per month repayable in the period of four years i.e. by 30.06.2017 or on demand vide a Pro-Note dated 01.07.2013.

6. The Defendant No.1 improved his work and with the intent of expanding his work, approached the Plaintiff again for another loan. As per his request, he received second loan of Rs.50,000 on an interest of 4% per month and Penal Interest of 2% per month repayable to be repaid by 14.03.2016 vide Pro-Note dated 15.04.2014.

7. He again gave third and fourth loan on 01.05.2015 and 01.06.2015 for Rs. 1.25 lakhs and Rs. 2 lakhs respectively on an interest of 3% per month and 7.5 % per month respectively till the date of actual repayment and Penal Interest @ 2% per month vide the Pro-Notes dated 01.05.2015 and 01.06.2015.

8. The loans are summarized as follows:

Date	Loan Amount (Rs.)	Interest Per Month	Penal Interest Per Month
01.07.2013	1,50,000	3%	2%
15.04.2014	50,000	4%	2%
01.05.2015	1,25,000	3%	2%
01.06.2015	2,00,000	7.5%	2%



9. The Plaintiff claimed that the Defendant defaulted repeatedly on account of which the actual amount along with money accumulated. On satisfying himself about the correctness of the calculation of the amount as shown by the Plaintiff, *Defendant No.2 Ms. Kishwari wife of Defendant No.1 issued one cheque No.069181 dated 10.05.2017 drawn on Syndicate Bank, Jind Branch for a sum of Rs.1,50,000/-*. However, the cheque on presentation got dishonoured for the “funds insufficient”. A Complaint under Section 138 of the Negotiables Instrument Act, 1881 (*hereinafter referred to as ‘NI Act’*) had been filed against Defendant No.2 at District Court, Jind which is pending trial.

10. On the date of issuance of Cheque *i.e.*, 10.05.2017 the Defendant No.1 issued one signed written document whereby he promised to repay the entire amount by October, 2020.

11. In the month of June 2017, the Plaintiff asked the Defendant to pay the entire principal loan amount of Rs. 5.25 lakhs along with the over-due interest money for which the Defendant sought two months’ time, but failed to return the money. The Defendants had been repeatedly assuring the payment during the proceedings under Section 138 NI Act before the District Court, Jind, but had failed to pay a single penny.

12. The total sum which had accrued as on 30.05.2022 is Rs.75,20,182/-, as per the calculation sheet. **The Plaintiff thus, filed the Suit for Recovery of the said amount along with pendent lite and future interest.**

13. The Memo of Appearance under Order XXVII Rule 3(1) CPC was filed by the Defendants along with their postal address, on 02.12.2012.



14. The Plaintiff/Respondent then moved an Application under Order XXVII Rule 2(3) read with Section 151 CPC wherein it was submitted that despite due service on 26.09.2022 as evident from the Tracking Report, the Defendants had not put in their appearance within 10 days as provided under Order XXXVII and thus, a Decree was sought to be passed under Order XXXVII Rule 2(3) CPC.

15. **The learned District Judge *vide* the Impugned Order** observed that since the *Memo of Appearance* had not been filed within a period of ten days, but was filed much beyond the period of limitation, ***the Suit of the Plaintiff under Order XXXVII CPC was decreed in the sum of Rs.75,20,182/- along with interest @ 6% per annum from the date of Institution of the Suit till the Decree was satisfied.***

16. Aggrieved by the said Judgment, the Defendant/Appellant ***has filed the present Regular First Appeal.***

17. **The grounds of challenge** are that this Court had *no territorial jurisdiction to entertain the present Suit.*

18. Further, as per the contents of the Affidavit dated 10.05.2017, it constituted a *Memorandum of Mortgage* regarding a plot of land in Bihar, which was treated as security for the loan given and therefore, either the Court of Jind, Haryana, or the Courts in Bihar had the territorial jurisdiction to try the aforesaid matter, and that the Courts at Delhi had no territorial jurisdiction. Moreover, the Promissory Notes had been signed at Jind, Haryana, and the cause of action if any, for the recovery of money, also arose at Jind. Moreover, the cheque was issued at Jind and was dishonoured



at Jind, which further reflected that this Court had no territorial jurisdiction.

19. It is further asserted that there are no reasons given in the Impugned Order. It does not even touch as to how a loan of Rs.1.5 lakhs swelled up to Rs.75,20,182/-. The Affidavit dated 10.05.2017 purportedly executed by Appellant No.1, mentions that as on that date Rs. 5.25 lakhs were outstanding against the Appellants, but there was no mention about the rate of interest. The learned Trial Court grossly failed to discuss how the liability of Rs.75,20,182/- arose.

20. Furthermore, there is no rule under Order XXXVII CPC appearance cannot be filed beyond a period of ten days or that the Court can cursorily pass the Judgment, without considering the facts of the case.

21. It was further contended that only a loan of Rs.1.5 lakhs had been taken, while rest of the alleged loan of Rs.3.75 lakhs was never taken by Appellant No.1. While giving the loan of Rs.1.5 lakhs, the Respondent had obtained the signatures of the Appellant on various papers, which were blank and unfilled, on the pretext that the papers were necessary for the purpose of his Income Tax Returns. The Appellants being barely literate and could hardly read a few Hindi sentences, had put their signatures.

22. The bare perusal of the Affidavit dated 10.05.2017 which allegedly acknowledged a debt of Rs. 5.25 lakhs, makes it clear that the signature of Appellant No.1 had been taken on the blank sheet on which the contents of the Affidavit had been printed subsequently. The Affidavit dated 10.05.2017 acknowledging a debt of Rs.5.25 Lakhs shows that it only has the signature at the bottom of the page, when there should have been double



signatures on the Affidavit. Clearly, from the face of the document it is evident that it has been obtained improperly.

23. The cheque of Rs.1.5 lakhs was taken as security from the wife of Appellant No.1, which is evident from the circumstances. A suspicion is raised as to why a person, who is involved in private lending business, would take a cheque of only Rs.1.5 lakhs against the defaulting borrower against whom cumulatively, Rs.3.75 lakhs was already outstanding.

24. The Appellant has further contended that the Plaintiff is a practising Doctor being an Orthopaedic Surgeon, *but is involved in money lending to the people and is engaged in a business like Non-Banking Financial Companies (NBFC), for which he has no license.*

25. It is further stated that the Plaintiff in fact, frequently visits the Court which has bolstered his confidence and he behaves rudely with the Court staff regarding which an FIR No.433/2018 under Section 186 and 506 IPC, P.S. Civil Lines, Jind on the complaint of Receipt and Dispatch Clerk, Court of the District & Sessions Judge, Jind, Haryana, has already been registered.

26. The Plaintiff is influential and has been manipulating people around him in Jind, which has been done to the Appellant / Defendant No.1. The Appellant asserted that he had only taken a loan of Rs.1.5 lakhs from the Plaintiff on 10.05.2017 on which date the signatures had been taken on various papers which were blank and unfilled and have been subsequently manipulated.

27. It is claimed that the Suit had been filed on false Promissory Notes by inflating the loan amount of Rs.1.5 lakhs by more than 50 times to



Rs.75,21,182/- in May, 2020, which would put even Shylock to shame who had demanded a pound of flesh for defaulting the payment of loan (*Merchant of Venice by Shakespeare*).

28. The Appellant has further asserted that he was never served with the Summons for Appearance, and it is only when the Summons of Complaint under Section 138 NI Act were served on Appellant No.2 on 25.11.2022 in the Court at Jind, that he came to know about the present pending Suit. Consequently, he immediately filed his appearance on 02.12.2022 which was within ten days from receiving/coming to know about the pendency of the Suit.

29. A prayer is, therefore, made that the Impugned Order be set aside.

Submissions heard from learned counsel for the Appellant and Respondent in person.

30. It is settled proposition of law that when a Plaint is filed, it is for the Court to scrutinize if it had territorial jurisdiction and whether the Suit is filed within limitation independent of any objection taken by the opposite party.

31. The first aspect which emerges from the Plaint itself, is that the four loans were given between 01.07.2013 to 01.06.2015. The Plaintiff claimed that there was an acknowledgment by way of a cheque dated 10.05.2017 of Rs.1.5 lakhs given in discharge of partial liability, towards the interest.

32. The Respondent has relied on an Affidavit dated 10.05.2017 *i.e.*, the same date on which the cheque has been issued, which again was executed at Jind, which stated that *in case the Appellant was unable to pay the entire*



sum of Rs.5.25 lakhs along with the entire interest till October, 2020, he would sell his land in Bihar and pay back the money. The Respondent has tried to create his limitation by alleging that the acknowledgment came by way of the Affidavit dated 10.05.2017.

33. In this regard it has been rightly pointed out on behalf of the Appellant that the bare perusal of Affidavit would show that it has single signatures at the bottom of the page, which is blatantly untrue because his signatures had been taken initially on blank papers. Significantly, though the document is given a nomenclature of an Affidavit and has the term ‘*shapathkarta*’ (deponent) mentioned at two places, the signature of the Appellant occurs only at the bottom of the page which lends some credence to his claim that his signatures had been obtained on a blank paper, and this document has been fabricated subsequently.

34. Pertinently, though it is claimed to be an Affidavit, it does not so mention in the Title. Also, it is not notarized by the notary public. Whether it is an acknowledgment or an Affidavit, and whether it had been validly executed by the Appellant, is a triable issue giving a right to the Appellant to at the least, have some opportunity to prove his defence.

35. Furthermore, the loan had been taken in the sum of Rs.5.25 lakhs, but these are all four independent transactions dated 01.07.2013, 15.04.2014, 01.05.2015 and 01.06.2015. The alleged Affidavit is of 10.05.2017, while the first transaction is dated 01.07.2013. The alleged acknowledgement is, therefore, beyond a period of three years from the date of first two transactions. ***This again raises serious issue about the Suit being filed,***



within the period of limitation.

36. Thirdly, the Respondent has claimed amounts towards penal interest @ 3% to 7.5% per month in the respective transaction.

37. Section 74 of the Indian Contract Act, 1872 deals with compensation for breach of contract where penalty is stipulated. It is evident from this Section itself that the penal interest is in fact in the nature of damages/compensation as stated in Section 74.

38. In terms of Section 74, *only reasonable compensation not exceeding the amount so named, can be granted by way of penalty.* Here is the case where allegedly the total loan amount was of Rs.5.25 lakhs on which by arbitrarily calculating, the penal interest, the amount claimed is Rs.75 lakhs.

39. This aspect was also considered in the case of Fateh Chand v. Balkishan Das, [1964] 1 SCR 515, wherein the Supreme Court had also observed that the penalty sought to be imposed in a case of breach of contract has to be reasonable.

40. In the case of Central Bank of India v. Ravindra & Ors., (2002) 1 SCC 367, while considering the difference between penal interest and interest, it was observed that *penal interest can be charged only once for one period and therefore, cannot be permitted to be capitalised. Moreover, if the penal interest is charged by way of penalty for non-payment, it cannot be so capitalised.* It has been further clarified that *in the pre-suit interest at the stipulated rate is subject to judicial scrutiny; penal in nature must be moderated to a reasonable level.*

41. *It is again a question for consideration whether a person can claim*



such penal interest on the simple loan transaction.

42. Additionally, there is not one or two, but there are four transactions one after the other undertaken by the Appellant, that too with an interest of 3% to 7.5% per month coupled with penal interest of 2% per month, which raises the question of the nature of the transactions itself; *whether in fact these are friendly loans or in fact are in the nature of money lending.* It also raises a question of whether the Respondent had any authority to be a money lender or if he had a requisite License for the same.

43. Unfortunately, in this case merely because the Appearance got filed belatedly on 02.12.2022, the Suit of the Plaintiff has been decreed, without giving an opportunity to the Appellant to of the Suit. *The learned District Judge fell in error in not considering the jurisdictional issues which are pertinent to be considered by the Court, irrespective of any objection taken by the opposite party.* It had been explained by them that they did not receive the summons and had filed the Appearance as soon as they came to know about the pendency of the suit. Moreover, an opportunity should have been given to the Appellants, who are semi-literate people from Jind to explain the delay in filing the Memo of Appearance.

44. The perusal of the Impugned Order shows that there has been complete non-application of mind and on the asking of the Respondent, the learned District Judge has passed a Decree without looking into the facts of the case. *It is absolutely a non-speaking Order, which even otherwise is not sustainable.*

45. The most significant objection taken by the Appellant, *is the lack of*



territorial jurisdiction of this Court. From the bare perusal of the Plaintiff, and from the alternate address mentioned in the Memo of Parties, it emerges that the Respondent is a resident of Jind.

46. Furthermore, the Appellants / Defendants are the resident of Jind, who as per the averments in the Plaintiff itself, and Defendant No.1, was having the business of utensils being made from some scrap, and the Memo of Parties reflects that the place of business / residence of the Appellants, is Jind. *The loan documents were all prepared at Jind.*

47. The Plaintiff himself has averred that on all the four occasions when he extended the loan to the Appellant, a corresponding Promissory Note and Receipt were duly executed. The Promissory Notes and the Receipts are all executed at Jind.

48. Though, the Appellant has tried to create jurisdiction by claiming that the Appellants had come to seek loan at his residence, *but that in itself cannot be termed as part cause of action arising in Delhi.*

49. The Plaintiff is a temporary resident of Jind, who had been dealing with the Appellants at Jind, the loan had been given at Jind and the documents have also been executed at Jind. Pertinently, the alleged cheque of Rs.1.5 lakhs dated 10.05.2017 is also of the Bank of the Appellant located at Jind. It got dishonoured there only and the Complaint under Section 138 NI Act has been filed by the Plaintiff, in Jind.

50. From the overwhelming evidence and the Plaintiff itself, it is established that no part of cause of action which has arisen in Delhi and, therefore, *the Courts at Delhi had no territorial jurisdiction which should have been*



considered by the Trial Court, before decreeing the Suit.

51. It is the fundamental law of pleadings that *the Plaintiff must describe how the Court has territorial jurisdiction, and it is the bounden duty of every Court, to first consider if it has territorial jurisdiction, even before issuing the summons.* Irrespective of it being taken as an objection by the other party, no Court can issue summons in a Suit where it has no territorial jurisdiction.

52. Therefore, on this ground, where the averments in the Plaintiff itself establishes that, *this Court at Delhi, had no territorial jurisdiction to entertain the Suit, the Impugned Order is hereby set aside.* The observations made herein on other aspects, are only for the purpose of adjudication of the contentions in this Appeal and are not a final expression on the merits of the present case, which the parties are at liberty to raise in the appropriate proceedings.

53. **The Plaintiff is directed to be returned to the Respondent / Plaintiff, to be presented in the Court of appropriate jurisdiction.**

54. Pending Applications are disposed of accordingly.

NEENA BANSAL KRISHNA, J

APRIL 10, 2026

va