



2026:DHC:3457



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

% *Reserved on: 13th February, 2026*

Pronounced on: 25th April 2026

+ **RSA No.150/2024, CM APPL. 47257/2024 (stay)**

KISHAN KUMAR GUPTA

S/o Late Om Prakash Gupta

R/o 291/1, D-6, Sector-6, Rohini,

Delhi-110085

.....Appellant

Through: Mr. Galib Kabir, Advocate.

versus

RAJ KUMAR

S/o Late Bishan Sarup

R/o 3139, Lal Darwaza

Bazaar Sita Ram

Delhi-110006

.....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. Second Regular Appeal under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to 'CPC'*) has been filed on behalf of the Appellant against the Judgment dated 14.05.2024, whereby the learned District Judge-06, Central District, Delhi in RCA DJ No. 16/2019, has upheld the Judgment and Decree dated 18.12.2018 of the learned Civil Judge *whereby the Suit of the Plaintiff for Recovery of Rs.2,84,500/-, has been dismissed.*

2. The Substantial question of Law that arises in the present Appeal is:



(i) *Whether the oral evidence is admissible in the teeth of Written Document?*

(ii) *Whether findings on oral evidence, in contradiction to written document, is contrary to S.90/S.91 Indian Evidence Act?*

3. The Plaintiff/Appellant had filed a Suit for Recovery of Rs.2,84,500/- along with the *pendente lite* and future interest @18% p.a. against Defendant.

4. The *facts in brief*, are that the Plaintiff and the Defendant were well known to each other, having previously been residents of Sita Ram Bazar, Delhi. The Defendant took a loan of Rs.3,20,000/- on 15.09.2013, stating that he was under financial stress as he had purchased a house in August, 2011 and had also got his son married. The Defendant promised to pay in a year's time and he also promised to pay interest @18% p.a.

5. The Defendant failed to pay the loan amount and when the Plaintiff insisted, he issued a cheque dated 21.10.2014 for Rs.3,20,000/- in favour of the Plaintiff, with an assurance that on presentation, the cheque would be encashed.

6. The cheque, however on presentation for encashment on 16.01.2015, was dishonoured with the remarks "Accounts Closed", *vide* Return Memo dated 19.01.2015. The Plaintiff immediately approached the Defendant for the return of loan and also served a demand Notice dated 18.02.2015 asking the Defendant to repay the loan amount.

7. With the intervention of common friends, the dispute was amicably settled, and the Defendant agreed to pay a sum of ₹1,10,000/- in *lieu* of the cheque, in instalments. The first instalment of ₹10,000/- was payable on



25.03.2015, and subsequent instalments of an equal amount, were to be paid on a monthly basis, commencing from 01.05.2015.

8. The parties entered into a Settlement dated 16.03.2015, in the presence of witnesses. Clause 4 of the said Settlement provided that, in the event of the Defendant's failure to pay two consecutive instalments, the Plaintiff would be at liberty to claim the entire loan amount of ₹3,20,000/-. The Defendant paid five instalments of ₹10,000/- each from 25.03.2015 till August 2015, and one further instalment on 05.10.2015, thereby paying a total sum of ₹60,000/-. However, the Defendant failed to pay any instalments from October, 2015 onwards and thus, failed to honour the Settlement dated 16.03.2015.

9. In view of the Defendant's default, the Plaintiff became entitled to recover the entire loan amount of ₹3,20,000/- along with interest. However, after adjusting the sum of ₹60,000/- already received, the Plaintiff was entitled to balance amount of ₹2,60,000/- along with interest @18% per annum. *The Plaintiff thus, filed the present suit for recovery of ₹2,84,500/- along with pendente lite and future interest @18% per annum.*

10. The Defendant, in the **Written Statement**, contended that the Plaintiff has not disclosed any cause of action, as the averments made in the Plaint are contrary to the documents on record. It was further contended that the present litigation has been initiated solely to harass the Defendant.

11. The Defendant also asserted that the Suit has not been properly valued for the purpose of jurisdiction and court fees. Additionally, it was alleged that the *Plaintiff is a professional money lender*, who has played fraud upon innocent persons including the Defendant, and being unlicensed, was not entitled to advance loans.



12. The Defendant asserted that the true and material facts are that the Defendant is educated only up to Class 2 and is an uneducated person. He earns his livelihood by selling 'chole kulche' on a rehri at Chawri Bazar, Delhi. The Defendant had taken a loan in the year 2010, being in need of money. On the insistence of the Plaintiff, the Defendant issued a blank signed cheque bearing No. 654606, drawn on SBI, Asaf Ali Branch, New Delhi; however, he received only a sum of ₹20,000/-.

13. The Defendant further claimed that, being an uneducated and god-fearing person, he started repaying the said loan amount of ₹20,000/- in instalments, as agreed between the parties, at the time of advancement of the loan. It was also asserted that the Plaintiff used to maintain a record of the amounts received from the Defendant.

14. It was further alleged that on 09.06.2014, the Plaintiff assaulted the Defendant and demanded a sum of ₹2,00,000/-, despite the Defendant having protested that only a balance of ₹20,000/- was due. The Defendant claimed that he was again assaulted at the house of one Mr. Raju (*Makhan Wala*), whereupon on the next day, i.e., 10.06.2014, he lodged a Police Complaint at 09:45 a.m. *vide* DD No. 24-B.

15. Pursuant thereto, the matter was claimed to have been amicably resolved between the parties, wherein it was agreed that the Defendant had to repay only a sum of ₹20,000/-. The Defendant being a god-fearing person, accepted the proposal and undertook to return the loan amount.

16. The Defendant further asserted that in January, 2015, he sought the return of his cheque from the Plaintiff, who advised him to visit his Advocate's chamber for execution of a cancellation document, upon which the cheque would be returned. It was in these circumstances that the



Settlement dated 16.03.2015 came to be executed, which, according to the Defendant, was fraudulent and involuntary.

17. The matter was thereafter, settled for a sum of ₹1,10,000/-, out of which ₹60,000/- was paid by him up to 05.10.2015 and the balance ₹50,000/- in November, 2015, in cash. Despite such payment, and repeated requests made by the Defendant, including a written endorsement on the reverse of the Loan Agreement, the Plaintiff failed to return the cheque, on the pretext that it was in the custody of his Advocate for initiating legal proceedings.

18. The Defendant claimed that he had received only a sum of ₹20,000/-, but had repaid more than ₹4,00,000/-. The Defendant further contended that the present suit is false and frivolous and is liable to be dismissed on merits. All the averments made in the Plaint were denied, and the preliminary objections raised in the Written Statement, were reiterated.

19. The **Plaintiff in his Replication**, reaffirmed the averments of the Plaint and denied those in the Written Statement. It was specifically clarified that the entries in Annexure A pertained to an earlier loan transaction of 2010-2011 and not to the present loan of 15.09.2013, and that the Settlement of ₹1,10,000/- in *lieu* of the loan of ₹3,20,000/- was arrived at through the intervention of common friends, in view of the Defendant's representation of his inability to pay the entire amount.

20. The learned Civil Judge framed the Issues, which are as under: -

- (i) Whether the plaintiff is entitled to a decree in the sum of Rs.2,84,500/- as prayed for? OPP
- (ii) Whether the present suit is not maintainable being filed without any cause of action? OPD



(iii) Relief.

21. The Plaintiff examined himself as **PW-1** and proved the cheque dated 21.10.2014 for Rs.3,20,000/- as Ex.PW-1/1. The cheque return memo, the receipt and the Legal Notice, Settlement dated 16.03.2015 were exhibited as Ex.PW-1/2 to Ex.PW-1/12.

22. **PW-2**, Mr. Manohar Lal corroborated the testimony of the Plaintiff.

23. The Defendant examined himself as **DW-1** and reiterated his defence as contained in the Written Statement.

24. **DW-2**, Mr. Raj Kumar Sharma from the State Bank of India, produced the Statement of Account as Ex. DW-2/1.

25. **DW-3, ASI Prabhu Dayal**, proved the Police Complaint dated 10.06.2014 as Ex. DW-3/A.

26. The *learned Civil Judge*, on appreciation of the evidence, concluded that though the Plaintiff claimed to have granted the loan of Rs. 3,20,000/- on 15.09.2013, the cheque Ex. PW-1/1 was issued much later, on 21.10.2014. It was observed that if the Plaintiff's version that the loan was repayable in a year's time were to be accepted, the demand for return ought to have been made around 15.09.2014 and there was no occasion for the Defendant to issue the cheque only in October, 2014.

27. The learned Civil Judge further took note that the Plaintiff had admitted, in his cross-examination, that the cheque was given to him on 15.09.2013 itself which, in the view of the learned Civil Judge, contradicted the Plaintiff's own pleaded case. The testimony of **PW-2**, Mr. Manohar Lal, was also not accepted.

28. The reference was made to the testimony of Defendant, to observe that there was a doubt about the Plaintiff's version of advancement of loan



on the given date and also of the duly filled blank cheque being given by the Defendant on the date of advancement of loan, which probabalized that the version of the Defendant that no loan was ever advanced, was correct and the blank cheque had been misused by the Plaintiff.

29. Adverting to the Settlement Ex. PW-1/7 dated 16.03.2015, the learned Civil Judge observed that the said Settlement had been executed in the office of the Plaintiff's Advocate, in the presence of **PW-2** who had also deposed in favour of the Plaintiff, but in the absence of any witness on behalf of the Defendant, which in the view of learned Civil Judge, cast a doubt upon its voluntariness.

30. The fact that the Plaintiff had agreed to settle for Rs. 1,10,000/- against an alleged loan of Rs. 3,20,000/-, without any interest, was also held to be improbable. Clause 4 of the Settlement, providing for revival of the entire loan amount of Rs. 3,20,000/- upon default of two instalments, was held to be unconscionable and in the nature of a penalty, and the Settlement was thus, *held not to be voluntary*, particularly keeping in view that the Defendant was an illiterate person who did not know English.

31. It was further observed that the Plaintiff had admittedly received Rs.50,000/-, but the cheque was not returned by the Plaintiff. *The testimony of the Plaintiff was, therefore, disbelieved and the case of the Plaintiff for Recovery, was dismissed.*

32. The Plaintiff preferred **RCA DJ No. 16/19**, challenging the dismissal of his suit. The **learned District Judge** reappreciated the evidence led by the parties, and concurred with the findings regarding contradictions in the Plaintiff's case, and **found no merit in the appeal, which was accordingly dismissed.**



33. Aggrieved by the dismissal of the appeal, the present Regular Second Appeal has been filed.

34. The **grounds of challenge** are that, under the subsequent Settlement Agreement, there was an admission of liability by the Defendant, and the said document was duly signed by both the parties. It is contended that the Settlement Agreement contained all the terms of the contract and any oral evidence contrary to its terms, is inadmissible, in support of which reliance has been placed on Tamil Nadu Electricity Board v. N. Raju Reddiar (1996) 4 SCC 551, and Smt. Vidyawati v. Hans Raj AIR 1993 Del 187.

35. The grievance raised is that vital and material issues were neither framed nor considered by the learned Appellate Court. The learned Appellate Court was required to examine whether the Settlement Agreement dated 16.03.2015 was binding on the parties; whether the Plaintiff was entitled to recover the principal amount of ₹2,60,000/- after adjusting the sum of ₹60,000/- paid by the Defendant; and whether, after admitting the Settlement Agreement and making payment of six instalments pursuant thereto, the Defendant could deny the Agreement and its terms.

36. The Appellant further submitted that the Plaintiff had settled the matter with the Defendant for a sum of ₹1,10,000/- out of his generosity, despite having advanced a loan of ₹3,20,000/-. It was argued that the decision of the learned Appellate Court is not based on proper consideration of issues and evidence.

37. It was further urged that it was immaterial whether the cheque was issued on 15.09.2013 or 21.10.2014, when the Defendant had admitted having issued the cheque to the Appellant in discharge of his loan liability. The Defendant is stated to have admitted having taken a loan of ₹3,20,000/-



in the Settlement Agreement dated 16.03.2015 Ex. PW-1/7, and any finding to the contrary, is erroneous.

38. A prayer is thus, made that the impugned judgment dated 18.12.2018 of the learned Civil Judge and the judgment dated 14.05.2024 of the learned Appellate Court, affirming the dismissal of the Suit, be set aside and the Suit of the Plaintiff be decreed.

Submissions heard and the record perused.

39. It is an admitted fact that the Plaintiff and the Defendant were known to each other since long and the Defendant was also a resident of Sita Ram Bazar, Delhi, where Plaintiff had also resided for a long time.

40. The case of the Plaintiff was that on account of the marriage of his son and for construction of his house, the Defendant came under financial strain and eventually took a loan of ₹3,20,000/- from the Plaintiff on 15.09.2013. The factum of having taken a loan stands fully corroborated from the admission of the Defendant in the cross-examination that he had got his son married and constructed the house in the year 2011. His own admissions reflect that the Defendant was under financial constraint and had to pay money to others. Consequently, he took a loan of ₹3,20,000/- from the Plaintiff, in 2013.

41. The *second aspect* which emerges from the evidence of the parties is that, admittedly, a cheque dated 21.10.2014 had been given by the Defendant to the Plaintiff, though he had asserted that it was a blank cheque given by him; however, it is only a bald assertion and is not corroborated by any cogent evidence.

42. It is also pertinent to note that the consistent stand of the Defendant was that he had taken a loan, though he claimed it to be of ₹20,000/-. If the



loan was of ₹20,000/-, there was no reason or occasion for him to have issued the cheque dated 21.10.2014, Ex. PW-1/1, for a sum of ₹3,20,000/-. These documents are admitted by the Defendant, though his oral testimony is only of simpliciter denial and a vague defence of the loan having been taken as ₹20,000/-, though the cheque was issued.

43. Pertinently, the Plaintiff had explained that though the loan was taken in September, 2013 with an assurance that the Defendant would return the loan amount within a year or so and had also promised to pay interest @18% p.a., if he failed to discharge his obligation. The Plaintiff had consequently approached him for return of the loan, whereupon the Defendant issued the cheque dated 21.10.2014.

44. There is absolutely no contradiction or discrepancy in the testimony of the Plaintiff, which stands fully corroborated by the corresponding documents. The observations of the learned Civil Judge, as endorsed by the learned ADJ, that if the loan was repayable after one year of its advancement, the demand ought to have been made in March–April 2014, and that it was not understandable why a person would issue a cheque in October 2014, does not appear to be well-founded.

45. It has been overlooked that both the Plaintiff and the Defendant were well known to each other and, apparently, there had been a close association. As per the testimony of the Plaintiff, he had been approaching the Defendant, who eventually gave the cheque in October/November 2014. The loan taken in September, 2013, was to be returned in one year, and therefore, giving of cheque in October 2014, is reasonable. ***There is absolutely no contradiction, as has been observed by the learned Civil Judge and the learned District Judge.***



46. It is further the deposition of the Plaintiff that the cheque was presented for encashment on 16.01.2015, but the same was returned *vide* Memo Ex. PW-1/2 for the reason “Account Closed” on 19.01.2015. Again, the cheque, as well as the return memo, establishes the issuance of the cheque by the Defendant, in discharge of his loan liability. In fact, the defendant had also not denied issuing the cheque. The findings of the learned Civil Judge and the learned ADJ are contrary to the documents proved on record.

47. Further, the Plaintiff had deposed that, when he kept on approaching the Defendant and the loan amount was not repaid, the parties eventually entered into a formal Written Settlement dated 16.03.2015, Ex. PW-1/7, which was got prepared through an Advocate.

48. The Defendant has not denied the execution of the Settlement. It was recorded in the Settlement that *even though the loan taken was of ₹3,20,000/-*, the Plaintiff agreed to settle it for ₹1,10,000/-, on the condition that the same would be repaid in 11 equal consecutive instalments of ₹10,000/- each. It was further agreed that in case there was a default of two or more instalments, the Plaintiff would become entitled to claim his earlier loan of ₹3,20,000/-. These are the express terms of the Settlement, which admittedly bears the signatures of the Defendant. *Not only this, the Defendant duly acted upon this Settlement and admittedly paid six instalments of ₹10,000/- from 25.03.2015 till 05.10.2015.*

49. The Defendant further asserted that the balance amount of ₹50,000/- had been paid by him in cash, though there is absolutely no proof thereof. When the first six instalments had been duly endorsed on a paper, there is no



reason for the alleged payment of ₹50,000/- not being similarly endorsed or evidenced by any written document.

50. It is established from the testimony of the Defendant himself that he had paid ₹60,000/- pursuant to the Settlement, Ex. PW-1/7, but again defaulted in making the balance payment of ₹50,000/- in terms of the Settlement.

51. Reliance has been placed on *M/s Unikol Bottlers Ltd. v. M/s Dhillon Kool Drinks & anr.* 1994 (28) DRJ, wherein, it was observed that where a plea of coercion, undue influence or unequal bargaining power is taken, the party must set out full particulars thereof. Bald and vague allegations, unsupported by material particulars, are of no consequence. It was further observed that for a valid contract, it is essential that the parties give their free consent. Section 10 of the Indian Contract Act, 1872 statutorily recognises the requirement of free consent for a valid contract. For the purpose of ascertaining whether the parties exercised free will while entering into the Settlement, the following factors are required to be looked into: -

- (i) Did the defendant protest before or soon after the agreement?
- (ii) Did the defendant take any steps to avoid the contract?
- (iii) Did the defendant have an alternative course of action or remedy? If so, did the defendant pursue or attempt to pursue the same?
- (iv) Did the defendant receive benefit of independent advice?



52. In the case of *M/s Unikol Bottlers Ltd*, (supra) it was found that the Defendant never made any protest before entering into the Agreement or even thereafter; on the contrary, he affirmed the agreement and proceeded with its performance. It was thus, concluded that contracts are meant to be performed and not avoided. Justice requires that parties who have negotiated at arm's length, be held to their bargains, unless it can be shown that their consent was vitiated by fraud, mistake, or duress.

53. The principles as enumerated in *M/s Unikol Bottlers Ltd* (supra), applies squarely to the present case.

54. The plea of the Defendant that he was illiterate and that the Settlement was involuntary, cannot be countenanced. If the Settlement was truly coercive, there was no reason for the Defendant to have acted upon it by paying six consecutive instalments of Rs. 10,000/- each, spread over a period of nearly seven months, instead of lodging a protest or issuing a notice to the Plaintiff. The conduct of the Defendant is, therefore, clearly inconsistent with his stand of coercion and is a complete answer to the plea of involuntariness.

55. It is also relevant to notice that the Plaintiff served upon the Defendant a Legal Notice dated 22.12.2015, Ex. PW-1/8, the receipt of which has been admitted by the Defendant in his cross-examination. The Defendant has also admitted that despite receiving the said Notice, he did not send any reply. The failure of the Defendant to reply to the Legal Notice, when the alleged coercion or the alleged payment of Rs. 50,000/- could easily have been asserted therein, belies his defence and raises an inference against him.



56. On the contrary, the case of the Plaintiff stands duly supported by the documents on record, including the Cheque, the Return Memo, the Settlement and the Legal Notice, whereas the defence of the Defendant rests on bald assertions, unsupported by any document whatsoever.

57. The fundamental principle of law, that the recitals in a written document take precedence over oral testimony, is no longer *res integra*. In *V. Anantha Raju v. T.M. Narasimhan*, (2021) 17 SCC 165, the Hon'ble Supreme Court, following its earlier decision in *Roop Kumar v. Mohan Thedani*, (2003) 6 SCC 595, reiterated that where a contract is reduced to writing, Sections 91 and 92 of the Indian Evidence Act, 1872 bar any oral evidence seeking to contradict, vary, add to or subtract from the terms of such writing. Written instruments are entitled to a much higher degree of credence than oral testimony, for they are presumed to be the final and deliberate expression of the parties' intentions and are not to be disturbed by the "*slippery memory*" of subsequent oral statements.

58. The Settlement Agreement Ex. PW-1/7 dated 16.03.2015 bears the admitted signatures of the Defendant and contains the complete terms of the compromise between the parties, including the loan amount, the settled amount, the schedule of instalments and the consequence of default. The attempt of the Defendant to contradict these express terms by oral testimony of an earlier loan of Rs. 20,000/- is, therefore, impermissible in law.

59. It may thus, be concluded that the fundamental principle of law that the recitals in a written document take precedence over oral testimony has been completely overlooked by the learned Civil Judge as well as the learned District Judge, while upholding the dismissal of the suit of the



Plaintiff. *There is a serious illegality in law committed by both the learned Civil Judge as well as the learned District Judge.*

60. It is, therefore, concluded that since the Defendant had entered into the Settlement dated 16.03.2015, Ex. PW-1/7, and had partially acted upon it, and thereafter committed breach, he is bound by the terms of the Settlement. Clauses 3 and 4 of the Settlement read as under:

“3. That if the first party fails to pay the first instalment on 25.03.2015, the second party shall be at liberty to proceed in law court and claim Rs.3,20,000/- with interest and cost instead of Rs.1,10,000/-.

4. Further it is agreed that in the event of any two consecutive defaults in payment of instalments, the second party shall be at liberty to claim Rs.3,20,000/- of loan amount as per law.”

61. Since the Defendant/Respondent, without any justification, has committed breach of the terms of the Settlement and has failed to make further payments after paying six instalments in terms of Clause (4) of the Settlement, the Plaintiff is entitled to recovery of ₹2,60,000/-.

62. Considering the long duration and the relationship between the parties, *pendente lite* and future interest @ 5% p.a. is awarded to be paid till the realization of the suit amount.

63. The impugned judgment dated 18.12.2018 passed by the learned Civil Judge and the judgment dated 14.05.2024 passed by the learned Appellate Court are hereby **set aside**, and the suit of the Plaintiff is decreed in the sum of ₹2,60,000/-, along with *pendente lite* and future interest @ 5% p.a. till the payment of the decretal amount.

64. Decree Sheet be prepared accordingly.



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65. The Appeal is **disposed** of accordingly. The pending Applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 25, 2026/RS