



2024:DHC:8480



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23.08.2024
Pronounced on: 05.11.2024

+ CS(OS) 243/2022

AMARENDRA DHARI SINGH

.....Plaintiff

Through: Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.Azmat H.Amanullah,
Ms.Oorjasvi Goswami, Advs.

versus

ADITI SHIVINDER SINGH

.....Defendant

Through: Mr.Gautam Narayan,
Ms.Asmita Singh, Mr.Aditya
Dewan, Mr.Sahil Chandra &
Mr.Parth Tiwari, Ms.Ananya
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

I.A. 18183/2023

1. This application has been filed by the plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 (in short, 'CPC'), praying for a decree to be passed on basis of an admission of the defendant to the claim of the plaintiff in the Suit.

Case of the Plaintiff

2. The plaintiff has filed the present Suit praying for the recovery of Rs.78,59,74,575/- along with interest at the rate of 18% per annum from the defendant.

3. It is the case of the plaintiff that the defendant is the niece of the plaintiff, related to him from his maternal side. She is the daughter of late Mr. P.P. Singh and Mrs. Rajshree Singh, who are very close to the



2024:DHC:8480



plaintiff, and the plaintiff had a lot of regard for them. The plaintiff also had good relations with the defendant.

4. The plaintiff asserts that in the month of January 2021, the defendant has approached the plaintiff for a short-term loan citing financial difficulty. As the defendant was in dire need of funds, based on the family relations between the plaintiff and the defendant, and in good faith, the plaintiff lent an amount of Rs.15,00,00,000/- (Rupees Fifteen Crores) to the defendant in the following manner and terms of a letter dated 20.01.2021:

<i>S. No.</i>	<i>Drawn On</i>	<i>Cheque No.</i>	<i>Transaction Reference No.</i>	<i>Debit Date</i>	<i>Amount</i>
1.	Andhra Bank, R.K Puram Branch Account No. 04811010006 4379	000313	UBINR520210 12002171233	20.01.2021	4,50,00,000/-
2.	Andhra Bank, R.K Puram Branch Account No. 04811010006 4379	000314	UBINR520210 12002171073	20.01.2021	4,30,00,000/-
3.	Andhra Bank, R.K Puram Branch Account No. 04811010006 4379	000315	UBINR520210 12002171121	20.01.2021	4,45,00,000/-
4.	Kotak Mahindra Bank, South Ex. Branch Account No. 4312266185	000016	KKBKR52021 012000778332	20.01.2021	1,75,00,000/-



2024:DHC:8480



5. The plaintiff asserts that the amount was debited through cheques from the bank accounts of the plaintiff for processing the payment via RTGS/NEFT to the defendant.

6. The plaintiff asserts that it was agreed between the defendant and the plaintiff that the defendant shall repay the above amount on the plaintiff demanding repayment of the same. The plaintiff asserts that two cheques amounting to Rs. 15,00,00,000/- (Rupees Fifteen Crores) were handed over by the defendant to the plaintiff towards repayment of the loan.

7. The plaintiff asserts that thereafter, the defendant again approached the plaintiff in the months of February, April, and May 2021, and borrowed a further amount of Rs. 51,70,00,000/- (Rupees Fifty One Crores Seventy Lakhs), in the following manner:

<i>S. No</i>	<i>Drawn On</i>	<i>Cheque No.</i>	<i>Transaction Reference No.</i>	<i>Debit Date</i>	<i>Amount</i>
1.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000319	UBINH21057752984	26.02.2021	4,50,00,000/-
2.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000320	UBINH21057753380	26.02.2021	4,00,00,000/-



2024:DHC:8480



3.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000321	UBINH21053348	26.02.2021	4,00,00,000/-
4.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000322	UBUNH21057753523	26.02.2021	3,50,00,000/-
5.	HDFC Bank, South Ex. Branch Account No. 50100093 505068	000366	337542021022600810 0000095	26.02.2021	4,00,00,000/-
6.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000061	UBINH21103583943	13.04.2021	4,00,00,000/-
7.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000063	UBINH21103584063	13.04.2021	4,00,00,000/-



2024:DHC:8480



8.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000064	UBINH21103570247	13.04.2021	5,10,00,000/-
9.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000065	UBINH21103567658	13.04.2021	10,00,000/-
10.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000068	UBINH21127771897	07.05.2021	5,00,00,000/-
11.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000069	UBINH21127772102	07.05.2021	5,00,00,000/-
12.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000070	UBINH2112771943	07.05.2021	5,00,00,000/-



2024:DHC:8480



13.	Andhra Bank, R.K Puram Branch Account No. 04811010 0064379	000073	UBINH21138206852	18.05.2021	3,50,00,000/-
-----	--	--------	------------------	------------	---------------

8. The plaintiff asserts that the amount was debited through cheques from the bank accounts of the plaintiff for processing the payment via RTGS/NEFT to the defendant. The plaintiff further asserts that the above loan was given in terms of the letters dated 26.02.2021, 12.04.2021, and 17.05.2021, which were similar to the letter dated 20.01.2021.

9. The plaintiff asserts that the total amount borrowed by the defendant from the plaintiff from January 2021 to May 2021 was Rs. 66,70,00,000/-. It was agreed between the plaintiff and the defendant that the above loan was a short-term loan, which was re-payable by the defendant on demand by the plaintiff.

10. The plaintiff claims that for the repayment of the said loans, the defendant had also handed over duly signed cheques to the plaintiff.

11. The plaintiff asserts that the signed cheques for Rs. 18,50,00,000/ (Rupees Eighteen Crores and Fifty Lakhs Only) (towards the loan disbursed on 06.05.2021 & 17.05.2021) had been misplaced by the plaintiff, and the plaintiff had requested the defendant to issue a fresh cheque for the said amount. However, despite the request, the defendant did not issue fresh cheques for the said amount.



12. The plaintiff asserts that apart from the cheque for Rs.18,50,00,000/-, the details of the other cheques given by the defendant to the plaintiff towards repayment of the loan amount totalling Rs. 48,20,00,000/-, are as follows:

<i>S. No.</i>	<i>Drawn On</i>	<i>Cheque No.</i>	<i>Amount (Rs.)</i>
1.	HDFC Bank, Janpath Branch	000115	10,00,00,000/-
2.	HDFC Bank, Janpath Branch	000116	10,00,00,000/-
3.	HDFC Bank, Janpath Branch	000117	10,00,00,000/-
4.	HDFC Bank, Janpath Branch	000118	5,00,00,000/-
5.	HDFC Bank, Janpath Branch	000208	5,20,00,000/-
6.	HDFC Bank, Janpath Branch	000209	4,00,00,000/-
7.	HDFC Bank, Janpath Branch	000219	4,00,00,000/-

13. The plaintiff asserts that prior to giving the above loan to the defendant, in the month of August 2020, the plaintiff was approached by the mother and the sister of the defendant, namely, Mrs. Rajshree Singh and Mrs. Arundhati Khanna, respectively, for short-term loans. Based on the family relations and in good faith, the plaintiff lent an amount of Rs.5,00,00,000/- (Rupees Five Crores Only) to Mrs.Rajshree Singh vide Letter dated 13.08.2020, and an amount of Rs.6,90,00,000/ (Rupees Six Crores Ninety Lakhs Only) to Mrs. Arundhati Khanna vide Letter dated 28.08.2020. The above loans were also short-term loans that were repayable on demand and for the



repayment of which, Mrs. Rajshree Singh and Mrs. Arundhati Khanna had handed over duly signed cheques to the plaintiff. As Mrs. Rajshree Singh and Mrs. Arundhati Khanna have also failed to return the loan amounts despite various requests of the plaintiff, the plaintiff had to file suits for recovery of monies against them as well.

14. It is the case of the plaintiff that he had a lot of regard for the father of the defendant and close relations with the defendant and her family. Due to such relations, the plaintiff had trusted the defendant as well as Mrs. Arundhati Khanna and Mrs. Rajshree Singh with huge sums of money. The plaintiff was assured, and it was represented to him that the money would be returned upon demand and the plaintiff believed the assurances of the defendant and her family.

15. The plaintiff asserts that he demanded the repayment of the loan amounts on multiple occasions but each time the defendant sought time for repayment of the same. In view of the family relations, in particular the regard the plaintiff had for the father of the defendant, the plaintiff agreed to the defendant's requests to not encash the cheques given by the defendant to the plaintiff towards the repayment of the loan amounts.

16. The plaintiff asserts that prior to the plaintiff giving the above loans to the defendant, on 29/30th August 2020, the defendant, Mrs. Arundhati Khanna, and Mrs. Rajshree Singh had also approached the plaintiff seeking financial help. The defendant, Mrs. Arundhati Khanna, and Mrs. Rajshree Singh had offered to sell to the plaintiff property bearing House No. 10, Maulsari Avenue, Westend Greens, A F Rajkori, South West Delhi, New Delhi – 110038, belonging to R.C.



2024:DHC:8480



Nursery Private Limited (in short, 'Company'). The plaintiff was informed that the four sons of the defendant and Mr. Shivinder Mohan Singh are the shareholders of the Company and Mrs. Rajshree Singh, and Mrs. Arundhati Khanna are the directors of the Company. The defendant, Mrs. Arundhati Khanna, and Mrs. Rajshree Singh had assured the plaintiff that the Property was free from any and all kinds of encumbrances and that they were authorized to deal with the plaintiff on behalf of the Company as the Company was under their control and management.

17. The plaintiff asserts that based on oral discussions, an agreement was arrived at regarding the purchase of the Property between the plaintiff and the Company, on 30.08.2020. It was, *inter alia*, agreed that the Property would be sold by the Company to the plaintiff for a consideration of Rs.24,75,00,000/- (Rupees Twenty Four Crores and Seventy Five Lakhs Only) to be paid by the plaintiff to the Company and that the entire sale consideration was to be paid upfront by the plaintiff to the Company. Other essential terms for the sale of the Property were also agreed between the plaintiff and the Company. Accordingly, a valid, binding, and concluded contract was arrived at between the plaintiff and the Company for the sale of the Property by the Company to the plaintiff, pursuant to which, the plaintiff paid the entire sale consideration of Rs. 24,75,00,000/- (Rupees Twenty-Four Crores and Seventy-Five Lakhs Only) for the purchase of the Property to the Company, on 01.09.2020.

18. The plaintiff asserts that subsequently, the plaintiff became aware that an Order dated 16.04.2019 had been passed in OMP (EFA)



(COMM) 6/2016 titled '***Daiichi Sankyo Company Limited Vs. Malvinder Mohan Singh & Ors.***' pending before this Court, whereby this Court had, *inter alia*, directed a stay on the transfer of the property. The plaintiff asserts that on the plaintiff confronting the defendant, Mrs. Rajshree Singh, Mrs. Arundhati Khanna, and the Company with regard to the above order, the plaintiff was informed that the status quo order had been wrongly passed and that the property or the Company had no relation or connection to the said proceedings. The plaintiff was assured that the said order was likely to be vacated shortly as the said order was obtained on incorrect and misleading facts. The plaintiff believed the assurances made to him.

19. The plaintiff asserts that subsequently when the plaintiff became aware that it was always the intention of the defendant, Mrs. Arundhati Khanna, Mrs. Rajshree Singh, and the Company to cheat and defraud the plaintiff, the plaintiff filed a Complaint dated 06.09.2021 with the Economic Offences Wing (in short, 'EOW'), PS Mandir Marg, New Delhi. The plaintiff also filed a Complaint under Section 200 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), being CT Cases No. 134 of 2022, before the Court of the learned Chief Metropolitan Magistrate, South-East District, Saket Courts, Delhi against the accused persons, including the defendant, the Company, Mrs. Rajshree Singh, and Mrs. Arundhati Khanna. The plaintiff has also filed a suit, being CS(OS) No.128 of 2022, against the Company seeking specific performance of the oral agreement to sell the Property to the plaintiff.

20. The plaintiff asserts that even after filing the complaint with



2024:DHC:8480



EOW, the plaintiff demanded repayment of the loan on various occasions, including by his letter dated 23.10.2021, however, despite repeated requests, the defendant has consciously and deliberately failed, and/or neglected to repay the loan amount.

21. The plaintiff claims that after various requests for repayment of the loan amounts, the defendant sent a handwritten letter dated 19.10.2021 to the plaintiff, acknowledging the financial help and loan provided by the plaintiff to the defendant. The defendant also expressed gratitude towards the plaintiff and the fact that she was grateful to the plaintiff for the generosity with which the plaintiff helped the defendant.

22. The plaintiff claims that the plaintiff replied to the letter dated 19.10.2021 of the defendant, by his letter dated 08.12.2021, wherein the plaintiff stated that though the defendant had expressed her love and gratitude and acknowledged that the plaintiff helped her at the lowest point of her life, however, the defendant had failed to explain as to why the plaintiff was cheated by the defendant, her sister-Mrs.Arundhati Khanna, and their mother-Mrs.Rajshree Singh with regard to the sale of the Property belonging to the Company. The plaintiff claims that the plaintiff had also expressed his anguish that his faith in the family had been betrayed by the repeated inducements and misrepresentations, and he was cheated by the defendant. The plaintiff reminded the defendant that the understanding and agreement between them was that of a short-term loan which was repayable on demand, however, in spite of the demands and requests for repayment of the loan, on multiple occasions, the defendant had failed to repay



2024:DHC:8480



the loan amount. The plaintiff informed the defendant that the plaintiff will be encashing cheques amounting to Rs. 48,20,00,000/- (Rupees Forty Eight Crores and Twenty Lakhs Only) issued for repayment of the loan, and requested the defendant to ensure that the cheques are duly honored upon presentation. By the said Letter, the plaintiff once again requested the defendant to issue fresh cheques for the balance amount of Rs. 18,50,00,000/- (Rupees Eighteen Crores and Fifty Lakhs Only) in place of the cheques which had been misplaced by the plaintiff. The defendant replied by a Letter dated 27.12.2021, wherein she made false and frivolous allegations, however, stated that monies borrowed would be returned to the plaintiff.

23. The plaintiff claims that as far as the cheques given by the defendant are concerned, the plaintiff presented one cheque bearing No. 000117 for an amount of Rs. 10,00,00,000/- (Rupees Ten Crores Only) on 24.12.2021, however, the same got dishonoured and returned with the remarks '*Insufficient funds*' vide Return Memo dated 27.12.2021. The plaintiff, therefore, through his counsel, issued a Legal Notice dated 31.12.2021 under Section 138 of the Negotiable Instruments Act (in short, 'NI Act') to the defendant, and thereafter, also filed a complaint against her under Section 138 read with Section 142 of the NI Act, being CC No. 2669/2022, which is pending adjudication before the court of the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi District, Delhi.

24. It is also the case of the plaintiff that subsequently, the plaintiff also presented the remaining signed cheques handed over by the defendant to the plaintiff, which have also been dishonoured on



31.03.2022 with remarks '*Insufficient Funds*'.

25. The plaintiff asserts that at no stage has the defendant denied her liability to repay the loan, however, despite repeated assurances, the defendant has failed/neglected to repay the same.

26. The plaintiff, therefore, filed the present suit claiming the amounts due from the defendant, along with interest at the rate of 18% per annum.

Case of the Defendant

27. The defendant, in her written statement, has alleged that there is no enforceable debt owed to the plaintiff. The defendant claims that the financial aid provided by the plaintiff was given voluntarily out of love and affection, based on family relations, and was repayable on an 'as and when able to' basis. The plaintiff, representing himself as a benevolent well-wisher of the defendant's family, transferred money directly to the defendant and indirectly through her mother- Mrs. Rajshree Singh, and her sister- Mrs. Arundhati Khanna, and R.C. Nursery Pvt. Ltd., without any specific demand for repayment. The defendant asserts that no terms of repayment were negotiated or agreed upon, making the current suit premature, and as one filed only to harass the defendant and her family.

28. The defendant claims that she was caught unintendently in an extortion racket and was in dire need of money to meet the extortionist's demands. The plaintiff herein is an uncle of the defendant, and given that on earlier occasions the plaintiff had proposed to financially help out the defendant and her family



2024:DHC:8480



members, the defendant approached the plaintiff for financial assistance, which the plaintiff provided out of his own generosity, free will, volition and after representing himself to be a well-wisher of the defendant and her family. The money that was paid by the plaintiff to the defendant was in the form of financial aid and with a clear and unequivocal mutual understanding that the same would be repaid on an 'as and when able to' basis. The defendant claims that the said financial aid given by the plaintiff to the defendant, directly, and indirectly through Mrs. Arundhati Khanna, Mrs. Rajshree Singh, and R.C. Nursery Private Limited (against whom separate suits have been filed by the plaintiff), has since been utilized in meeting the demands of extortion. The investigation is ongoing and the money that has been involved therein is subject to attachment by the relevant authorities.

29. The defendant claims that a complaint in relation to the extortion being perpetuated against the defendant has already been filed and an investigation is under progress by the EOW. Based on the said complaint, the Enforcement Directorate (in short, 'ED') is also investigating offences under the Prevention of Money Laundering Act, 2002 (in short, 'PMLA') against the extortionist. The money that was provided by the plaintiff and the transactions involved therein form a part of investigations being conducted by the EOW and ED.

30. The defendant claims that an FIR No. 208/2021 dated 07.08.2021 was registered with the Special Cell, Delhi Police on the complaint filed by the defendant in respect of a protracted extortion masterminded and perpetuated by the said notorious conman, whereby the defendant was made to pay enormous amounts of money based on



2024:DHC:8480



credible threats to life and limb of the complainant/Defendant and her family members. To meet the unconscionable and exorbitant demands of the extortionist, the complainant, i.e. the defendant herein, had to involuntarily liquidate her personal and family assets and had to arrange for more money on an urgent basis. At that time, the identity of the conman was not known to the defendant, and she had become an unwitting victim of the carefully crafted and meticulously executed extortion. To avert any injury to the life and limb of herself and her family members, basis the seriousness of the threats that were looming large, borrowing money was a necessity.

31. The defendant also claims that based on the above FIR No. 208/2021, the ED had registered case no. ECIR/DLZO-I/54/2021 dated 08.08.2021 under the PMLA. Pursuant to the FIR, the EOW of the Special Cell, Delhi Police has also filed a charge sheet before the Special Judge, MCOC Act, Patiala House Courts, New Delhi. The ED has also filed its Complaint Case before the court of learned Additional Sessions Judge, Patiala House Courts, New Delhi. The defendant claims that, therefore, the money that was given by the plaintiff to meet the demands of the extortionist is currently a part of the subject matter of investigation by multiple authorities. The defendant also claims that to the best of the knowledge of the defendant, the ED has also submitted supplementary charge sheets in its active ongoing investigation in the matter in February, 2022 and August, 2022. The defendant also claims that the transactions mentioned by the plaintiff are a part of the active investigation by EOW and ED and pertain to an intricate web of extortion and money



2024:DHC:8480



laundering. The final outcome of the trial alone would result in establishing the true facts and circumstances. The defendant claims that till date recoveries of money from the said conman have been meagre and, in any case, no money has been returned back to the defendant.

32. The defendant claims that the plaintiff is a sitting Rajya Sabha member and has been harassing the defendant and her family members by instituting civil and criminal cases based on concocted and twisted facts and by taking advantage of his dominant position and misusing the authority of his office. He has also made threats on the life and limb of the defendant and her family members including her mother, who is an elderly woman aged about 71 years. The plaintiff was himself in judicial custody in a case of money laundering and misappropriation of funds causing immense loss to the public exchequer. Upon being released in August 2021, the plaintiff, acting in sheer greed and malice orchestrated a scheme to illegally recover the money that was voluntarily given by him as financial aid.

33. The defendant claims that the plaintiff has not come with clean hands before this Court and is seeking to misuse the process of law to extort money from the defendant and her family members. After providing the financial aid, and upon advice from his lawyers and Chartered Accountant, at a much later date, the plaintiff has sought to concoct a false narrative in which he seeks to embroil the defendant and her family members in frivolous litigations. Premised on the same transaction, the plaintiff in 2022 instituted suits for specific performance against R.C. Nursery Pvt. Ltd., and the present Suit as



also Suits against Mrs. Rajshree Singh and Mrs. Arundhati Khanna.

34. The defendant claims that the money was given directly to Mrs. Rajshree Singh and Mrs. Arundhati Khanna. On further requirement of money, due to the ongoing litigations, the plaintiff decided to give it in the account of the R.C. Nursery Pvt. Ltd. However, as per the advice of his Chartered Accountant, as no loan could be given to the R.C. Nursery Pvt. Ltd., hence, thereafter all further monies were given directly to the defendant. The defendant also claims that the plaintiff himself decided that money should be transferred to other persons in the defendant's family. The defendant claims that the transfer of the said amounts was based on requests made and the plaintiff decided how much to transfer and to whom.

35. The defendant asserts that as far as the money provided to the defendant through R. C. Nursery Pvt. Ltd., the plaintiff insisted on property papers of a property belonging to R. C. Nursery Pvt. Ltd., being handed over to him in lieu of the money that was already given or may be given in the future. The papers were handed over informally and in good faith. The same is now the subject matter of the Suit being CS (OS) No.128 of 2022 titled '*Amarendra Dhari Singh v. R.C. Nursery Pvt. Ltd.*'

36. The defendant claims that the plaintiff was approached solely because of the dire need for money and with the mutual understanding that the accounts shall be settled on 'as and when able to' basis. The defendant asserts that the beneficiary of the money provided by the plaintiff was neither the defendant, nor her family members, nor R. C. Nursery Pvt. Ltd. The defendant also claims that at the time the



2024:DHC:8480



defendant's husband was in judicial custody, there was an understanding between the plaintiff and the defendant that the money that was being given as a financial aid would be returned once her husband was released from jail and his litigations were resolved. She states that there was no agreement, whether written or oral, to the effect that the financial aid would be repaid 'on demand' or with interest, or at a particular date. The defendant also claims that no terms and conditions were discussed/negotiated for a particular date or mode for repayment of the financial aid.

37. The defendant claims that despite being made aware of the litigation in respect of R.C. Nursery Pvt. Ltd., the plaintiff still insisted on taking the original papers of a property belonging to R.C. Nursery Pvt. Ltd. and in due course, also pressurized the family members, who are the shareholders of the company, and induced one of its Directors, namely, Mrs. Arundhati Khanna, to hand over several documents in haste, including some blank signed cheques, blank pages, etc., under the garb of making the records look complete. The plaintiff at all times made the defendant and her family members believe that he had no intention to use them. The defendant claims that the transaction needs to be seen in the light of the immense mental trauma that was caused by the pervasive extortion that plagued the defendant and the dominant position of the plaintiff, who, after giving the money as financial aid, sought to coerce and pressurize the directors of R.C. Nursery Pvt. Ltd. and the family into converting the financial aid into a sale consideration.

38. The defendant claims that, in July 2021, the plaintiff asked the



defendant to contact his advocates in order to discuss the strategy so that the transactions in relation to providing the money could not be questioned. The defendant claims that the plaintiff was himself incarcerated at that time on account of his involvement in a case pertaining to immense loss to the public exchequer. The plaintiff's advocate, on 22.07.2021, also exchanged messages with the defendant to enquire if any application was being filed in this Court seeking clarification regarding the property owned by R.C. Nursery Pvt. Ltd. The plaintiff's advocate thereafter also contacted the advocate of the defendant on/around 24.07.2021 and on 02.10.2021 to enquire as to how the R.C. Nursery Pvt. Ltd. was treating Rs. 24.75 Cr. in its books. The specific query was whether the amount was being treated as a sale consideration or as a loan and what was the complete chain of documents of the property owned by R.C. Nursery Pvt. Ltd. The defendant claims that, therefore, it is clear that the allegation of there being a sale consideration for the property, which is subject matter of CS (OS) No. 128 of 2022 titled as '*Amarendra Dhari Singh v. R. C. Nursery Private Limited.*', was an afterthought by the plaintiff.

39. The defendant claims that after the plaintiff was released from judicial custody, the defendant along with Mrs. Rajshree Singh and Mrs. Arundhati Khanna went to meet the plaintiff on 10.08.2021 on their own initiative and explained to him about the extortion that had been perpetuated. The defendant claims that the plaintiff instead of being sympathetic as would be expected of a family member, suddenly demanded all his money back. The defendant again requested that the money would be given back once the defendant's



husband is released from jail and is able to sort out the legal issues. The defendant claims that the present suit and other proceedings instituted by the plaintiff against the defendant and her family members and R.C. Nursery Pvt. Ltd. are a clear afterthought by the plaintiff based on legal advice received by him.

40. The defendant claims that the plaintiff thereafter started sending threatening messages and creating false records. The plaintiff being aware of the facts and circumstances, in utter mala fide and by misusing his position of authority as a sitting member of the Rajya Sabha with immense political clout, has filed a complaint with the EOW on 06.09.2021 in relation to the money transactions between the plaintiff and the defendant and her family members. In the said complaint, it has been maliciously alleged by the plaintiff that he has been a victim of cheating/fraud committed by the defendant, Mrs. Arundhati Khanna, and Mrs. Rajshree Singh.

41. The defendant claims that the plaintiff in the year 2022 instituted various suits, apart from the present Suit, in respect of the same set of facts and circumstances solely to give colour to his false and baseless claims, embroil the family members of the defendant in frivolous litigation and harass them as he has clearly stated in his messages to them.

42. The defendant claims that the allegations and contentions are raised by the plaintiff in all the said suits and the present suit emanates from the same set of facts and circumstances and forms a part of the same transaction. The defendant claims that instead of making all the aforesaid person parties to the same suit, the plaintiff has indulged in a



multiplicity of proceedings which is not only a misuse of the process of law, but a sheer waste of time and resources of this Court and the respective defendants.

43. The defendant referring to the following correspondences submits that they show that the amount was repayable by the defendant only when he was able to pay and that the amount had been given by the plaintiff to the defendant only as financial aid and not as a loan:

“(i) On 21.10.2020 as a response to Mrs. Arundhati Khanna’s request for providing the bank account details for repayment purpose, the plaintiff stated that it *“Will be provided as and when amounts are available from your side”*.”

(ii) On 01.10.2021, the plaintiff admitted that he has to fight and save himself from agencies in his case as he has given money to the defendant, and this clearly shows the motive behind the message exchange from September/October 2021. In his message to Mrs. Rajshree Singh, he also states as follows:

"Please discuss and give me a payment plan"; "no interest is received till now. No commitment of return of principal. When you knew that your daughter is on cheating spree why did you not warned and stopped me. Now no agencies is willing to belief as to why should I have given so much money. So one more door has opened for me and hence I have to fight and save myself. In spite of having money I am a beggar today. "



(iii) On 05.10.2021, the plaintiff threatened to find out more information about the defendant's husband and raise the issue in Parliament. The plaintiff was trying to create a smokescreen and protect himself. It was stated by him as follows:

"I have told my people to find out everything so that I can raise the issue in Parliament and help the government to do justice to the peoples money that he has siphoned outside ... "

(iv) On 13.10.2021, the plaintiff reminded of previous discussions to repay money by 31.12.2021 and property papers pertaining to a property owned by R.C. Nursery Pvt. Ltd. and the subject matter of CS (OS) No. 128 of 2022 titled as ***Amarendra Dhari Singh v. R. C. Nursery Private Limited***, to be kept till that time. Pertinently, there is no mention of any interest or sale of property. It was stated as follows:

"First I will return the money by 31st December keep my property papers. Please give me 6.9 crores we have sold the jewelry in less than 25 crores we will buy the jewelry back and shortly sell and pay you back. After success of two cheating the biggest cheater came forward and the rest with your support by being silent daylight robbery was done ... "

(v) On 14.10.2021, the plaintiff alleges a casual approach of making no effort to pay back Rs. 103.5 crores. It was stated as follows:



"So you all think 103.5 crores was due to you all. Hence this casual approach of making no effort to pay back. How do you think that once your son in law comes he will pay."

(vi) In the message sent to Mrs. Rajshree Singh on 18.10.2021, it is evident that the plaintiff is trying to settle perceived family grudges. It was stated by him as follows:

"How com no replies are coming from rich people of Hailey Road. Remember my mother Urmila Singh was very poor as far as people of Hailey Road was concerned. Life has come fit/I circle now. Now that all 3 of you are silent let me do something. My lawyers have already made a list of people whom when I feel like would contact. I assure you I will spend enough money to set a example. Do not think I am poor. I am holding my anger. The day it gets out of control only God will save all 3 of you. "

(vii) Further, it is stated that the defendant and her family members tried to reach out to the plaintiff. However, the Plaintiff himself did not try and resolve the issues with the Defendant or her family members. As for instance in a message sent on 23.10.2021 sent to Mrs. Rajshree Singh, the Plaintiff states that:

"You people have ruined me. I have told my staff not anyone of you in my house. I will do everything to put all of you



on road I will use all my power to ensure justice for your son in law. So that he is sentence for his crimes. "

(viii) On 24.10.2021, the plaintiff again asked for a payment plan. There was no mention of interest or sale of property, rather the threat of a frivolous criminal prosecution to pressurize Mrs. Rajshree Singh into returning the money. It was stated by him as follows:

"Please talked to your daughters and give me a payment plan otherwise will have no option but to move legally. For the Rajokari house I have already filed a case of cheating against 3 of you in EOW You all cannot enjoy my money and I become a beggar."

(ix) On 25.10.2021, the plaintiff in a monologue where there is no counter acknowledgment of these messages as the demands were not as per the verbal understanding with him again referred to repayment of financial aid *inter alia* before falsely claiming about transfer of property by January 2021.

(x) On 26.10.2021, the plaintiff again spoke about the Defendant and Mrs. Arundhati Khanna being casual about financial aid. It was stated as follows:

"And my last meeting with your daughters they are so casual about the loan as if had owed them this money."

(xi) On 28.10.2021, the plaintiff also stated that the money that was given by him should be returned by 31.12.2021. This



demand is contrary to the mutual understanding that prevailed at the time of receiving money from the plaintiff that the financial aid would be payable on an 'as and when' basis. Further, the plaintiff makes no mention of any property belonging to R.C. Nursery Pvt. Ltd. and is merely interested in getting his money back. It was stated by the plaintiff as follows:

"In case money is not returned latest by 31st December I will do everything to ensure justice for all of you."

(xii) On 30.10.2021 he mentions that he has sent a message to 'Religare lady' (CMD of the Complainant in EOW FIR No. 50/2019 against Dr. Shivinder Mohan Singh) who has confirmed the meeting. It was stated as follows:

"I had sent a message to the lady of Religare and she told my PA that she will come and see me as and when I want."

On the same date, the plaintiff has also threatened to use his influence with the law enforcement authorities and also threatens to send the defendant, Mrs. Arundhati Khanna and Mrs. Rajshree Singh to Tihar jail. It was stated as follows:

"I am still holding on my anger and not pushing my case in EOW. If I start pursuing it all 3 of you will go to Tihar for a few weeks."



2024:DHC:8480



(xiii) In another message, on 17.10.2021, the plaintiff has also threatened to send goons. He stated that *'Actually I think I should send my party workers at your residence ...'*

The plaintiff is clearly misusing the authority of his office and his official position and power to threaten and coerce the Defendant, Mrs. Arundhati Khanna and Mrs. Rajshree Singh.

(xiv) On 11.11.2021, the plaintiff has threatened that he would *'never let your family be in peace'* and stated that *'the kind of fraud you all played with me will surely make all 3 and your sin go to hell. Maybe you all see hell here also. Because I will take recourse to strong legal remedies which will not be in good taste'*.

(xv) The plaintiff in a sheer abuse of this dominant position as a Parliamentarian and a politician hailing from Bihar has further threatened to file criminal cases in Bihar. On 06.11.2021 he had stated as follows: *"Do not blame me if I file criminal cases in Bihar. Jails in Bihar are terrible to live even for a few days'."*

44. The defendant asserts that the plaintiff has instituted false and frivolous cases under the NI Act solely to give color to his baseless claims, to harass the defendant, and to settle old family grudges and family grievances, and admittedly solely due to the advice given by his lawyers. The defendant claims that in the notices for dishonor of cheques sent to the defendant, Mrs. Arundhati Khanna on 31.12.2021, and to Mrs. Rajshree Singh on 03.01.2022, the plaintiff categorically



mentions that he had given money as '*financial aid*'. The defendant submits that the said cheques were given only as security and were given based on the assurance that they were only for the plaintiff's mental satisfaction. The defendant claims that the complaints under the NI Act have been filed based on blank cheques that were taken by coercion and inducement from the defendant, Mrs. Arundhati Khanna, and Mrs. Rajshree Singh through the plaintiffs' accountant while the plaintiff was in judicial custody.

45. The defendant claims that in the letter dated 27.12.2021, the defendant had urged the plaintiff not to misuse the cheques because the cheques were never meant for encashment or repayment. The plaintiff has filled up blank cheques and misused them with the sole intention of further harassing the defendant, Mrs. Arundhati Khanna, and Mrs. Rajshree Singh.

46. The defendant claims that there is no valid and existing 'debt' that can be claimed by the plaintiff. At all times it was made clear to the plaintiff that the financial assistance availed by the defendant, directly and indirectly through Mrs. Rajshree Singh, Mrs. Arundhati Khanna, and R.C. Nursery Private Limited, would be repaid on an 'as and when able to' basis and after the defendant's husband was released from prison and problems are resolved. She submits that in any case, the defendant's financial condition does not permit them to return the friendly assistance received from the plaintiff on an immediate basis.

Replication to the Written Statement of the Defendant

47. The plaintiff in replication asserts that the defendant categorically admits to having approached the plaintiff for a loan due



to her allegedly being in dire need of money. The averments in the written statement disclose that at the time when the loan was taken, the plaintiff was not informed of the actual/alleged reason for the defendant taking the loan, i.e., to pay bribes to an alleged conman to get the husband of the defendant out of jail. It is the case of the defendant that she and her family members informed the plaintiff of the alleged 'actual' reason for taking the loan over six months after the first part of the loan amount was transferred to the defendant in January 2021 and three months after the last tranche of the loan was given in May 2021.

48. The plaintiff in replication asserts that the defendant categorically admits to having taken the entire loaned amount of Rs. 66,70,00,000/- from the plaintiff as a loan that is alleged to have been given by the plaintiff out of love and affection based on family relations between the parties.

49. The plaintiff in replication asserts that the disingenuous nature of the written statement is clear from the unbelievable and false assertion of, on the one hand, that the loan was repayable on an 'as and when able to' basis, while also making the assertion, in complete contradiction of the earlier assertion, that no terms of repayment were ever negotiated between the parties, while again, at another place in the written statement, falsely alleging that parties had agreed that the loan amount would be returned once the defendant's husband was released from jail. Such contradictory averments clearly show the false nature thereof and are of no relevance to the admitted obligation of the defendant to return the loaned amount forthwith.



50. The plaintiff in replication asserts that though unrelated to the case at hand, the defendant also admits that personal loans were taken by her mother and sister from the plaintiff under similar false pretence and were then allegedly paid to this conman. The defendant also admits that the plaintiff transferred money to R.C. Nursery Pvt. Ltd. and was given title documents, though she falsely denies that there was any oral agreement for sale. In any case, these two loans and the oral agreement for sale are subject matters of different suits

Proceedings in the present Suit

51. The above suit was filed by the plaintiff under Order XXXVII of the CPC, however, *vide* an Order dated 02.05.2022 passed by the learned Joint Registrar (Judicial), while issuing summons thereon to the defendant, the said suit was treated as an ordinary recovery suit, by observing as under:

“Copies of cheques amounting to Rs.48.20 crores have been placed on record. As per para 8 of the plaint, signed cheques to the tune of Rs. 18.50 crores have been misplaced by the plaintiff. Since the claimed amount is Rs. 66.70 crores, however, dishonored cheques of the value of Rs.48.20 crores have been filed, I deem it appropriate to treat the instant suit as an ordinary recovery suit.”

52. On completion of the pleadings, the plaintiff has filed the present application under Order XII Rule 6 of the CPC praying for a judgment on admission of the defendant.

Submissions of the learned senior counsel for the Plaintiff

53. The learned senior counsel for the plaintiff submits that the defendant, in her written statement, has admitted to having taken the



entire loan amount of Rs.66.70 crores and having failed to repay the same to the plaintiff in spite of multiple demands. The defendant has also admitted that, at the time of taking the loan, the plaintiff was not informed of the actual/alleged reason for the defendant taking the loan, that is, to pay a bribe to an alleged conman to get the husband of the defendant out of jail. He submits that the plea of the defendant that the loan would be repayable only '*as and when able to*' cannot be accepted.

54. The learned senior counsel for the plaintiff submits that the plaintiff confines his claim to the recovery of only Rs.66.70 crores that has been admitted by the defendant in her written statement to be due and payable to the plaintiff. The plaintiff gives up his claim for interest over the said amount.

Submissions of the learned counsel for the Defendant

55. The learned counsel for the defendant, on the other hand, submits that while the defendant does not deny taking a loan from the plaintiff, who is her uncle, the said loan were repayable only when the defendant would be able to do so. The plaintiff had fixed no definite timelines within which the said loans were to be repaid to the plaintiff. He submits that the amounts received by the defendant was on account of love and affection, based on the cordial relations between the plaintiff and the defendants and their families.

56. He submits that the plaintiff had given the amounts to the defendant as a financial aid with a clear and unequivocal mutual understanding that the same would be repaid on an '*as and when able to*' basis.



2024:DHC:8480



57. He submits that the defendant was a victim of extortion committed by a notorious conman, namely, Sukash Chandrashekar, who, by impersonating as a high ranking official of the government and by misusing the name and image of such high ranking officer, had committed a continuous and sustained extortion against the defendant. He submits after brainwashing her into thinking that she was communicating with authorities in the government, the conman had established trust and extorted money from the defendant and her family members. He submits that the same has also been reported in a press release dated 30.04.2022, issued by the ED. He submits that an FIR No. 208/2021 dated 07.08.2021 was also registered with the Special Cell, Delhi Police on the complaint filed by the defendant against such protracted extortion. Investigation in the FIR is being undertaken by the EOW. The ED is also investigating offences under the PMLA. He submits that based on the FIR, the ED has already registered a case under the PMLA, and the EOW has also filed a charge sheet before the learned Special Judge.

58. The learned counsel for the defendant submits that in order to meet the unconscionable and exorbitant demands of the conman, the defendant had to liquidate every available asset and had to arrange money on an urgent basis. She was under extreme duress, fear and pressure from the said conman to arrange for more money. It was only based on the family relations and under the impression that the plaintiff, who is her uncle, would act in good faith, that she approached the plaintiff for short term financial aid. He submits that the plaintiff, at the time, portrayed himself to be a well-wisher of the



family and stated that he had high regards for the father of the defendant, who happened to be his first cousin. He submits that the plaintiff offered the personal aid/financial help while knowing about the family's financial condition and pending litigations. He submits that the plaintiff voluntarily gave money to the defendant.

59. The learned counsel for the defendant submits that the defendant was not the beneficiary of the amount given by the plaintiff, as the entire amount obtained from the plaintiff was transferred to the conman.

60. He submits that since, at the time of availing the financial assistance from the plaintiff, Dr. Shivinder Mohan Singh, the husband of the defendant, was in judicial custody, there was an understanding between the plaintiff and the defendant that the money that was given as financial aid would be returned only once Dr. Shivinder Mohan Singh was released from jail and the pending litigations were resolved. He submits that the plaintiff, acting in sheer greed and malice, has now sought to illegally recover the money that was voluntarily given by him as financial aid to the defendant with no fixed date for return. He submits that the suits filed by the plaintiff are a clear afterthought and are not maintainable.

61. He submits that the plaintiff has concocted the letters to claim that the amount given by him to the defendant was repayable on his demand. He submits that no documents evidencing the terms of repayment, such as the rate of interest or period of repayment, were discussed/agreed upon or reduced to writing. He submits that the defendant had never acknowledged, explicitly or implicitly, any



obligations to repay the money on demand.

62. He further submits that in the WhatsApp messages exchanged between the parties, the plaintiff has asserted that the repayment had to begin from December 2020, however, it is the own case of the plaintiff that an amount of Rs.66.70 crores was extended to the defendant even in 2021. He submits that this clearly shows that the case set-up by the plaintiff that the amounts given to the defendant was repayable on demand, is false. He submits that the message dated 20.10.2020 from the plaintiff, wherein he stated that he would provide his bank account details only when the amount to be repaid is available with the defendants, shows that the amount was to be repaid by the defendants only when they would have been able to do so.

63. He further submits that as far as the cheques allegedly given by the defendant to the plaintiff are concerned, the same were undated. It is the plaintiff who filled the dates in the said cheques. He submits that the same would amount to material alteration in the cheques, as provided under Section 87 of the NI Act. In support, he places reliance on the Judgment of this Court in **Krishna Finhold Pvt. Ltd. v. Gupta & Co & Anr.**, 2004 SCC OnLine Del 458 and **BPDL Investments (Pvt) Ltd. v. Maple Leaf Trading International (P) Ltd.**, 2006 SCC OnLine Del 217. He submits that though the Judgment in **Maple Leaf Trading International (P) Ltd.** (supra) was doubted upon in **Ravi Chopra v. State and Another**, 2008 SCC OnLine Del 351, it was distinguished on the ground that **Maple Leaf Trading International (P) Ltd.** (supra) dealt with a case under Order XXXVII of the CPC, which is the present case as well.



Analysis and Findings

64. I have considered the submissions made by the learned counsels for the parties.

65. Order XII Rule 6 of the CPC reads as under:

“6. Judgment on admissions.—(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

66. At the outset, it would be important to reiterate the principles that are applicable to an application under Order XII Rule 6 of the CPC and for a judgment to be pronounced on admission. The admissions of the defendant must be clear, unambiguous, and unequivocal. The defence set up by the defendant should not require evidence for its determination. At the same time, if the Court finds that the defence raised is a moon-shine and even if the plea taken is accepted, the same cannot act as a lawful defence to the claim of the other party, a judgment on admission by evoking power under Order XII Rule 6 of the CPC may be passed. The Court is required to ignore vague, evasive, and unspecific denials, as well as inconsistent pleas taken in the written statement and reply. The Court has to scrutinise



the pleadings in detail and has to come to the conclusion whether the defence raised by the defendant has any legs to stand on.

67. Explaining the scope and mandate of Order XII Rule 6 of the CPC, the Supreme Court in ***Karan Kapoor v. Madhuri Kumar***, (2022) 10 SCC 496, has held that the above provision confers a discretionary power to a Court who ‘may’, at any stage of the Suit, on the application of any party or on its own motion, and without waiting for the determination of any other question between the parties, make such Order or give such Judgment as it may deem fit having regard to any admission made by the parties. The said power should be exercised only when specific, clear, and categorical admissions of facts and documents are on record. It is intended to relieve the parties from a full-fledged trial and to pass a Judgment/Decree without taking any evidence with an admission of facts raised by one side and admitted by the other.

68. In ***R.K. Markan v. Rajiv Kumar Markan & Anr.***, 2002 SCC OnLine Del 148, this Court reiterated that for the passing of a Decree on the basis of admission in the pleadings, the admission has to be unequivocal, unqualified, and should be taken as a whole and not in part.

69. In ***Monika Tyagi & Ors. v. Subhash Tyagi & Ors.***, 2021 SCC OnLine Del 5400, a learned Single Judge of this Court held that the plea taken by the defendant in the Written Statement can be considered by the Court to find out whether it discloses any meaningful defence or not. If the pleadings were vague and were in the nature of total moonshine, the provisions of Order XII Rule 6 of



the CPC would be attracted, and the Court would be fully justified in not sending the case for trial but to pass a Decree based on admission.

70. In the present case, the defendant admits to having obtained Rs.66.70 crores from the plaintiff, which the plaintiff asserts was a loan while the defendant asserts was a financial aid. The fact remains that the defendant admits that the said amount was not given by the plaintiff as a gift but was repayable to the plaintiff by the defendant.

71. The plea of the defendant that the said amount was repayable '*as and when able to*' though may at first blush sound like a plausible defence of the defendant, the fact remains that, in law, once it is admitted that the amount is repayable, it has to be on the demand of the giver rather than on the ability of the payer, as otherwise it would really amount to a gift, which may be retransferred back to the donor at the mercy and sweet will of the donee.

72. A clue in this regard can be received from the provisions of the Limitation Act, 1963 and specifically Articles 19 to 21 of the Schedule to the Limitation Act, which read as under:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>19. For money payable for money lent.</i>	<i>Three years.</i>	<i>When the loan is made.</i>
<i>20. Like suit when the lender has given a cheque for the money.</i>	<i>Three years.</i>	<i>When the cheque is paid.</i>
<i>21. For money lent under an agreement that it shall be payable on demand.</i>	<i>Three years.</i>	<i>When the loan is made.</i>



73. A suit for the money lent can, therefore, only be filed within three years from the date the loan is made. Similarly, if the lender has given a cheque for the money, the suit can be filed within three years from the date the cheque is paid. The provision does not provide for a default option for the defendant/lendee to decide when he will pay or be able to refund the said amount to the lender. Therefore, unless there is a contract to the contrary, which may even be oral, the amount is repayable upon the lender's demand.

74. In the present case, to judge the defence of the defendant, it would be relevant to note that the defendant has taken contradictory stands on when the amount would be repayable by her to the plaintiff. At one instance, she states that the amount would be repayable on an '*as and when able to*' basis while, on the other hand, the defendant states that the amount was repayable when her husband would be released from jail and is able to manage his business. In a Letter dated 01.11.2021, the defendant states that the amount would be payable within three years.

75. From the above, it is evident that the defendant has admitted that the amount is repayable to the plaintiff. However, at the same time, the defendant takes contradictory stands on when it is repayable. This, therefore, be a case of raising vague and moonshine defence and the Court would be fully justified in not sending the case for trial, but instead passing a decree based on the defendant's admission.

76. In addition to the above, it is also admitted that the defendant had handed over cheques to the plaintiff for the repayment of the amount taken by her from the plaintiff. It is claimed that these cheques



were undated. The defence put up by the defendant is that by inserting a date on these cheques, the plaintiff has in fact carried out a material alteration in the same, and in terms of Section 87 of NI Act, the said cheques are rendered void.

77. I do not find any merit in this defence of the defendant as well.

78. Section 87 of the NI Act reads as under :

“87. Effect of material alteration.—

Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.—

And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

79. Interpreting the above provision, a learned Single Judge of this Court in ***Ravi Chopra*** (supra), has held as under:

“17. While it is correct that in terms of the above provision, any material alteration to a cheque without the consent of the drawer unless it is made to carry out the common intention of the original parties thereto renders the cheque void, the expression "material alteration" has not been defined. Significantly, Section 87 has been made subject to Sections 20, 49, 86 and 125 NI Act. These provisions help us to understand what are not considered 'material alterations' for



the purpose of Section 87.

18. *Section 20 NI Act talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and "either wholly blank or have written thereon an incomplete negotiable instrument" such person thereby gives prima facie authority to the holder thereof "to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp." Section 49 permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument "by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incurred the responsibility of an endorser." Likewise Section 86 states that where the holder acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Section 125 NI Act permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for payment. These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course.*

19. *The above provisions have to be read together with Section 118 NI Act which sets out various presumptions as to negotiable instruments. The presumption is of*



consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp. The only exception to this is provided in proviso to Section 118 which reads as under:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

20. A collective reading of the above provisions shows that even under the scheme of the NI Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a 'material alteration' for the purposes of Section 87 NI Act. What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. Therefore as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI Act."

(Emphasis supplied)

80. In **Bir Singh v. Mukesh Kumar**, (2019) 4 SCC 197, the



Supreme Court, analysing the provisions of the NI Act, held as under:

“20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in Hiten P. Dalal [Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16 : 2001 SCC (Cri) 960] .

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.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of fiduciary relationship between the payee of the cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139



of the Negotiable Instruments Act, in absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

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.”

81. It has, therefore, been held that by handing over a cheque, though signed but without a date, the drawer of the cheque is in fact giving an authority to the holder thereof to insert the date of his choice. Insertion of the date, therefore, will not make it a material alteration rendering the cheque void under Section 87 of the NI Act.

82. In the present case also, by handing over cheques, which were signed by the defendant though were undated, to the plaintiff, the defendant, in fact, is deemed to have authorised the plaintiff to insert a date in the same and to present the cheques for encashment. The plea of the defendant that it was the defendant who was to inform the plaintiff of when the cheques could be presented, would render the handing over of the cheques to the plaintiff nugatory and meaningless. Any such defence, therefore, cannot be accepted by this Court.

83. In relation to the defence of a drawer of a cheque claiming that the cheque was given only as a security and therefore, proceedings under Section 138 of the NI Act cannot be initiated against such drawer, the Supreme Court in ***Dashrathbhai Trikabhai Patel v. Hitesh Mahendrabhai Patel & Anr.***, (2023) 1 SCC 578, has held that



as long as the drawee of the cheque is able to show that the drawer has a liability to pay to the drawee the amount of the cheque, proceedings under Section 138 of the NI Act shall be maintainable.

84. Reliance placed by the learned counsel for the defendant on the Judgment in **BPDL Investment Pvt. Ltd** (supra) cannot be accepted as the Court therein had found that two of the four cheques were stale and never presented. Though the Court, in addition, also observed that whether the alteration made in the cheque would render the same void or not, would be a matter of trial, in view of the subsequent development of law, and as held hereinabove, mere filling up of a date in an undated cheque is not a material alteration rendering the cheque void.

85. In **Krishna Finhold Pvt. Ltd.** (supra), this Court was confronted with the facts where the person who had signed the purported loan application was not impleaded as a party defendant in the suit. The Court also found other suspicious circumstances on the transaction. The Court also found that the terms of the loan were not immediately forthcoming and it could only be a matter of conjecture that a loan may have given for a period of 5 or 10 years. It was in those peculiar facts that the Court found that the defendant has been able to make out a case for grant of leave to defend. The said judgment also cannot support the case of the defendant in the facts of the present case.

86. In the present case, as is noted hereinabove, the liability to repay is admitted by the defendant. It is also admitted that she had given the cheques under their own signatures with the amounts filled in to the plaintiff, and the plaintiff has merely inserted a date on the



2024:DHC:8480



said cheques. The said Judgment, therefore, cannot come to the aid of the defendants.

87. In view of the above, I find that the defence raised by the defendant is completely moonshine, frivolous and vexatious and, in fact, the defendant has admitted to her liability owed to the plaintiff.

88. In view of the above, the plaintiff is held entitled to a decree based on the admissions of the defendant.

89. The present application is, accordingly, allowed.

CS(OS) 243/2022

90. In view of the above order, the suit is decreed directing the defendant to pay to the plaintiff a sum of Rs.66.70 crores. The plaintiff shall also be entitled to costs of the suit.

91. Let a decree sheet be drawn accordingly.

92. The suit is disposed of in the above terms.

NAVIN CHAWLA, J

NOVEMBER 5, 2024/ns/DG

Click here to check corrigendum, if any