



2026:DHC:5094



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

%

*Reserved on: 9<sup>th</sup> April, 2026*

*Pronounced on: 10<sup>th</sup> June, 2026*

+

**RSA No. 184/2024 & CM APPL. 62781/2024 (stay)**

**SANJEEV TIWARI**

S/o Late Sh. P.R.Tiwari

R/o 201/A-3, Railway Quarters,

Basant Lane, Paharganj,

New Delhi.

.....Appellant

Through: Counsel for Appellant (appearance  
not given)

versus

**VIJAY KUMAR TIWARI**

S/o Late Sh. Pyare Lal Tiwari

R/o 413, City Cooperative Housing Society Ltd.,

Sector-55, Gurugram, Haryana.

....Respondent

Through: None

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellant against the Judgment dated 01.08.2024 whereby the learned District Judge has upheld *vide* Order dated 19.04.2022 of the learned Civil Judge, who has decreed the Suit of the Plaintiff/Respondent in the sum of Rs.2,20,000/- along with the interest @ 8% p.a. on the sum of Rs.2,00,000/-, from the date of filing of the Suit till the date of decree.



2. The Civil Suit bearing CS No. 93596/2016 was filed by the Plaintiff/Respondent, for Recovery of the loan of Rs.2,00,000/- along with the interest.

3. **The facts in brief**, the case of the Plaintiff is that he was carrying on business as the sole proprietor of M/s Western Wear Inc. In May 2009, at the request of the Defendant/Appellant, the Plaintiff advanced a friendly loan of Rs.2,00,000/- to him through two cheques of Rs.1,00,000/- each dated 04.05.2009 and 06.05.2009 respectively. The said cheques were duly encashed by the Defendant on 22.05.2009. It was agreed between the parties that the loan amount would be repaid within six months. However, despite the expiry of the agreed period, repeated demands, and service of a legal notice dated 21.02.2011, the Defendant failed to repay the loan amount. Consequently, the Plaintiff instituted the present suit seeking recovery of Rs.2,00,000/- along with interest.

4. In the **Written Statement**, the Defendant contended that the Plaintiff harboured a grudge against him. It was averred that the Defendant's father, Mr. Prithi Raj Tiwari, had instituted litigation concerning Property No. 4366, Near Vidya Mandir Wali Gali, Arya Samaj Chowk, Bhatinda, Punjab, and had borne the entire litigation expenses, amounting to approximately Rs.10,00,000/-. Upon the culmination of the proceedings, Mr. Prithi Raj Tiwari distributed the respective shares of the legal heirs in the said property. It was specifically pleaded that the Plaintiff, Mr. Vijay Kumar Tiwari, being one of the legal heirs, received his share in the property on 06.10.2006. Likewise, the shares of Mr. Inderjeet Tiwari and the other legal heirs were also disbursed on the same date.



5. The Defendant further pleaded that his father, Mr. Prithi Raj Tiwari, passed away on 10.03.2007. It was averred that during the lifetime of the Defendant's father, the Plaintiff had undertaken and assured that he would contribute towards and reimburse his share of the litigation expenses, which allegedly amounted to Rs.5,02,000/-. According to the Defendant, the two cheques aggregating to Rs.2,00,000/- relied upon by the Plaintiff were not issued as a loan but were issued in partial discharge of the Plaintiff's liability towards the said litigation expenses. It was further asserted that the Plaintiff had also issued a cheque for Rs.63,300/- dated 25.05.2008 from his bank account towards the said liability, and the amount was paid to Mr. Rohit Tiwari at Mumbai. On the basis of these averments, the Defendant contended that even after the aforesaid payments, a substantial amount remained due and payable by the Plaintiff. The Defendant, therefore, specifically denied that the sum of Rs.2,00,000/- constituted a loan advanced by the Plaintiff.

6. The **Plaintiff in the Replication**, denied the averments made in the Written Statement and reiterated his assertions made in the Plaint.

7. Issues on the pleadings were framed on 24.03.2012, which are as under:-

- (i) *Whether the Plaintiff has no locus standi to file the present suit? OPP*
- (ii) *Whether the suit of the Plaintiff is without cause of action? OPD*
- (iii) *Whether the suit valued property for the purpose of court fee and proper fee has been affixed thereof? OPP*
- (iv) *Whether the Plaintiff is entitled to the suit amount? OPP*



- (v) *Whether the plaintiff is entitled to interest on the amount claimed? OPP*
- (vi) *Relief.*

8. The Plaintiff, Mr. Vijay Kumar Tiwari as PW1 deposed in support of his case.

9. PW-2 Mr. Kanwal Krishan Garg deposed on similar lines as the Plaintiff.

10. PW-3 Mr. Prashant Tyagi, CCM, Kotak Mahindra Bank, West Patel Nagar, New Delhi, brought the record pertaining to the Account of M/s Western Wear In. Pertaining to the two cheques given to the Defendant. The Statement of Account was Ex.PW-1/1 and the Certificate issued by the Bank was Ex.PW-1/2.

11. The Defendant, Mr. Sanjeev Tiwari as DW1 examined himself in support of his case.

12. DW-2, Mr. Manoj Kumar deposed on similar lines as the Defendant.

13. The **learned Civil Judge** on appreciation of the evidence, found that the two cheques of Rs.2,00,000/- were given to the Defendant by the Plaintiff, which were duly encashed by him. This was proved not only by the Statement of Account of the Plaintiff Firm, but was also admitted by the Defendant.

14. Furthermore, the Plaintiff had proved his ITR Verification Form for the year 2010-2011, Ex.PW-1/D1 (colly) to which the Balance Sheet was appended, wherein the entry of loan amounting to Rs.2,00,000/- advanced to the Defendant, was clearly reflected in the Assets.



15. Moreover, the Defendant in his cross-examination dated 29.01.2020 also admitted receiving the Cheque of sum of Rs.1,00,000/- each in his Bank Account from the Plaintiff. The defence of the Defendant that the father of the Defendant had undertaken litigation in respect of family property in which he had incurred litigation expenses and the Plaintiff was to pay his share of Rs.5,20,000/- and the amount of Rs.2,00,000/- towards the payment of the said dues was held to be not proved and thus, the Suit of the Plaintiff for Rs.2,20,000/- along with interest @ 8% per annum on the principal amount of Rs.2,00,000/- till the date of decree was allowed.

16. **The Defendant Vijay Kumar Tiwari aggrieved by the said Judgment filed RCA No.79/2022** before the learned District Judge who in her Judgment dated 01.04.2024 found that the facts and the evidence had been rightly appreciated by the learned District Judge and did not find any illegality in the Judgment dated 19.04.2022. **The Appeal was accordingly dismissed.**

17. **The present Regular Second Appeal has been filed by Defendant Sanjeev Kumar Tiwari** against the Judgment of the learned District Judge dated 01.08.2024.

18. The **Substantial Question of Law** posed by the Appellant are as under:

*“(i.) Whether the First Appellate Court erred in law by not adjudicating upon the application filed by the appellant under order 41 rule 27 of CPC for bringing on record certain documents without which the said appeal could not be decided properly?”*



*(ii) Whether the Ld. Trial Court has erred in law under bona fide mistake of closing the evidence of remaining witnesses of the Appellant after examining DW2 because the evidence of DW3 and DW4 were essential for proving the fact that the payment of Rs. 02 lacs were not loan but payment towards legal expenses and sale proceeds of Bhatinda property sold by Respondent?*

*(iii) Whether the Ld. Trial Court and First Appellate Court also erred in law in shifting the onus of proof regarding issue no. 4 and 5 from OPP to OPD”*

**19. The grounds of Appeal** are that it was not appreciated that the Appellant was a Government Officer in the pay scale of Rs. 9300-34800 with a Grade Pay of Rs.4600/- and had about Rs.5 lakhs in his PF Account. He was a member of Northern Zonal Railway Employee Credit and Thrift Society and could have easily got loan at cheaper rates from PF Account/Society.

**20.** The defence of the Appellant that Late Sh. Prithvi Raj Tiwari had incurred litigation expenses in respect of ancestral property which the Respondent/Plaintiff was not willing to share which led to strained relationship between them. There was no probability of the Appellant taking any loan from the Respondent.

**21.** The onus for Issue No.4 and 5 was wrongly shifted to the Appellant since the Respondent/Plaintiff failed to prove that he had advanced a friendly loan of Rs.2 lakhs and that the said amount was not towards the reimbursement of the litigation expenses. The evidence of the Appellant



was closed under a bona fide mistake by the learned Trial Court after DW1 and DW2 out of five witnesses relied upon by the Appellant were examined. These three witnesses were vital to prove that the alleged amount was given on account of sale proceeds and litigations expenses for the ancestral property at Bhatinda. DW3 and 4 were essential witnesses. It was, therefore, stated that the impugned Judgment be set aside.

**22.** The Respondent in his response had reiterated that the friendly loan of Rs.2 lakhs along with interest @ 10% per annum had been duly given to the Appellant. It was further explained that the entire expenses in regard to the litigation and settlement of property at Bhatinda was borne by the Plaintiff Vijay Kumar Tiwari and the Appellant's father did not spend even a single penny in this transaction. PW2 Kanwal Krishan Garg who was the counsel in the disputed property of Bhatinda had clearly stated that he had taken Rs.25,000/- for contesting the Suit and that the entire amount was paid by the Plaintiff.

**23.** It was further contended that all the litigation therein, had no relevance with the Suit amount claimed by the Plaintiff in the Recovery Suit. The Appellant was unnecessarily confusing the loan transaction by claiming that it was the amount returned towards the litigation expenses. It is stated that the Suit was filed in the year 2002 in respect of Bhatinda property and almost all litigation expenses were paid, except the Counsel's fee and the final Settlement was arrived at on 21.05.2005. The loan was taken subsequently in the month of May, 2009. Therefore, by no stretch of imagination can it be termed as partial return of the litigation expenses.



24. The Plaintiff had also given a sum of Rs.50,000/- through cheque in November, 2006 to the father of the Appellant which was returned through the cheque by the mother of the Appellant in the year 2008. Therefore, if any adjustment was to be made, it would have been done at that time. It was denied that the due opportunity had not been given to the Defendant to examine his three witnesses. The onus of Issue No.4 and 5 had also been decided correctly. It was further submitted that the Appellant had not locus to file the Application under Order 41 Rule 27 CPC at a belated stage.

25. It was further stated that all the proposed issues by the Appellant were challenged to the facts and was not tenable. It was thus submitted that the Appeal was without any merit and was liable to be dismissed.

**Submissions heard and record perused.**

26. The case of the Plaintiff was that a loan of Rs.2 lakhs had been given to the Appellant/Defendant in May, 2009 as an interest free loan keeping the relationship of the parties. The two cheques of Rs.1 lakh each dated 04.05.2009 and 20.5.2009 were duly handed over to the Defendant who encashed the same. The money was utilized by the Defendant/Appellant for business purposes, as he was carrying on the business of a catering club in partnership with one Mr. Manoj, as the Defendant was the Govt. employee. The Defendant had admitted receiving this Rs.2 lakhs in his Account. This is further corroborated by the independent evidence by way of ITR Verification Form for the year 2010-11 Ex.PW1/D1. In the Balance Sheet appended to the ITR Verification Form, the entry of the loan amount of Rs.2 lakhs as advanced to the Defendant has been clearly reflected in the Assets.



The Plaintiff had been cross-examined at length, but his testimony could not be shaken.

**27.** His only defence was that this was towards reimbursement of Rs.5,02,000/- which was the litigation expenses to be borne by the Plaintiff. To support his averment, the Appellant had relied upon family Settlement Ex.PW1/2 which allegedly had the signatures of the Plaintiff at point A as well as Sale Deed of the property Ex.DW1/1.

**28.** However, as was observed by the learned Civil Judge, the Defendant had failed to furnish any particulars of the legal proceedings in respect of which the said amount was allegedly due. The alleged Family Settlement was dated 21.05.2008 was made between Smt. Ranjana, Smt. Raj Rai Tiwari, the Plaintiff and the successors of Late Sh. Bal Kishan Tiwari Ex.DW1/1, wherein it was reflected that litigation expenses of Rs.10 lakhs were incurred and also mentioned about the distribution of shares. The learned Civil Judge noted that the defence taken by the Defendant was mutually contradicted and was not corroborated by the evidence produced by the Defendant. Firstly, the Family Settlement dated 21.05.2008 Ex.DW1/1 in fact was a Sale Deed between legal heirs of Late Pyare Lal Tiwari and Sh. Harjeet Singh in regard to the shop forming part of property No.4366, Vidya Mandir Gali, Arya Samaj Chowk, Bhatinda (Punjab) and was not a family settlement. Secondly, the breakup of litigation expenses qua property bearing No.4366, Arya Samaj Chowk, Bhatinda (Punjab) was provided in the Sale Deed Ex.DW1/1, but it was not in regard to the residential property but in respect of one shop in the said property. Thirdly, it was claimed that the father of Defendant had paid all the litigation



expenses but bare perusal of Ex.DW1/1 reflected that the father of the Appellant was not a party to the document. In fact, the father of Defendant had died on 10.03.2007, as per the written statement, while the Sale Deed was executed on 21.05.2008. Furthermore, Ex.DW1/1 clearly stated that all kinds of expenses regarding the registration of Sale Deed was paid by the buyers. The Defendant was, therefore, unable to establish that the amount of Rs.2 lakhs was towards the share of litigation expenses.

**29.** Further in Ex.DW1/5, there is not a whisper about Rs.10 lakhs being the legal expenses. In fact, all the legal heirs of Late Sh. Pyare Lal Tiwari including the Plaintiff and the mother of the Defendant collectively received Rs.14 lakhs as the consideration amount.

**30.** The Defendant also referred to Family Settlement dated 19.08.1996 Ex.PW1/D2 which, however, also remained unproved. The learned Civil Judge observed that firstly the Family Settlement was only to the effect that Party 1 and Party 2 had already cancelled their General Power of Attorney executed in favour of Party 3 and it was mutually agreed to dispose of the Bhatinda property and distribute the sale consideration amongst themselves to the extent of their respective share. It did not mention anything about the litigation expenses or that the Plaintiff had to pay Rs.5,02,000/- as his share of litigation.

**31.** Moreover, the Family Settlement was dated 19.08.1986, whereas in the Written Statement it was stated that the shares were disbursed by Late father of Defendant in 2006 to Inderjeet Tiwari and others. The Defendant/Appellant was thus, unable to show the relevant date of the trial or when the said litigation charges became due and outstanding. There were



no other documents placed on record by the Appellant. The testimony of DW2 Sh. Manoj Kumar who had supported the testimony of Defendant also could not work in his favour. This witness admitted that he used to work as a Caterer in Railway Officer's Club in 2011. Moreover, he was not able to give the details about where he was called by the Plaintiff several times or Defendant was also taken on conference.

**32.** Most importantly, DW2 stated that there was no loan liability between the parties as no amount was given or received in his presence. This reflected that DW2 was not a competent witness to prove or disprove the loan of Rs.2 lakhs as no such transaction had transpired in his presence.

**33.** In the end it is pertinent to refer to the testimony of PW2 Kanwal Krishan Garg, the Counsel who had represented Late Prithvi Raj Tiwari father of Defendant as well as Vijay Tiwari in the litigation. This witness duly proved his Bar Council Identity Card Ex.PW2/D1. No suggestion was put to him that he was not the counsel of Late Shri Prithvi Raj Tiwari and the Plaintiff in the proceedings. Furthermore, this witness explained that his professional fee was Rs.20,000/- which was paid entirely by the Plaintiff. He also stated that the entire litigation expenses in the Trial Court as well as the Appellate Court did not exceed Rs.15,000/- in all. This PW2 withstood to the test of cross-examination and his testimony was not shaken.

**34.** Learned Civil Judge also noted that during the final arguments before the learned Civil Judge, it was argued that the Plaintiff had deposited the said cheques in the account of the Defendant in his own volition to set off the claim due against the Plaintiff to claim that no loan was taken by the Appellant. However, in paragraph 4 of the Written Statement the Defendant



had mentioned that the cheques had been issued by the Plaintiff and were encashed by the Defendant which again reflects that the cheques had not been deposited by the Plaintiff but by the Defendant/Appellant himself in his Account.

**35.** The Appellant had contended that he had moved an Application under Order 41 Rule 27 CPC for examination of his three witnesses, who inadvertently could not be examined by him before the learned Trial Court. However, when the Defendant/Appellant himself had chosen not to examine the three witnesses and had closed his evidence after recording the testimony of himself and DW2, he cannot now claim any inadvertence. Clearly, it is an attempt by the Appellant to fill the lacunae in the evidence. As already discussed above, the Plaintiff through cogent evidence has established his case for recovery of Rs.2 lakhs given by him as loan. There is no merit in this contention of the Appellant seeking an opportunity for examining additional evidence which in fact is only to fill in the lacunae in the evidence.

**36.** From the aforesaid appreciation of evidence by the learned Civil Judge and its re-appreciation by the learned District Judge in appeal, it is evident that both Courts concluded that the amount in question was a loan taken by the Appellant which he failed to repay.

**37.** Both the Courts have cogently appreciated the facts to arrive at the conclusion to decree the Suit.

**38.** Though the Appellant has sought to project certain substantial questions of law, the grounds urged are purely factual in nature and do not



2026:DHC:5094



give rise to any substantial question of law. Henceforth, there is *no substantial Question of Law* raised in the present Second Appeal.

**39. The Appeal is without merit and is hereby, dismissed and disposed of accordingly. The pending Application(s), also stands disposed of.**

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 10, 2026  
RS/VA**