

Rajender Kumar Singh vs Rohan Singh on 30 January, 2025

IN THE COURT OF CIVIL JUDGE-01, CENTRAL
DISTRICT, TIS HAZARI COURTS, DELHI
PRESIDED OVER BY SH. SAHIL KHURMI

CNR No: -DLCT030014882023
CS SCJ No.587/2023

Sh. Rajender Kumar Singh
S/o Sh. Ram Sagar Chaudhary,
R/o Khasra No.7/25, First Floor,
Uttrakhand Enclave, Kamalpura Majra,
Delhi-110084.

Also at:-
House No.15, Gali No.16,
Block-A-1, Bengali Colony,
Sant Nagar, Burari,
North Delhi,
Delhi-110084.

....Plaintiff

Versus

Sh. Rohan Singh
S/o Sh. Mahender Singh
R/o House No.A-257, Tanwar House,
Gali No.5, Tomar Colony,
Shedu Baba Mandir,
Kamalpur Majra,
Burari, Delhi-110084.

Also at:-
M/s Shree Ram Property
Shop No.761, Main Market,
Budh Bazar, Kamalpur (Kamal Vihar),
Burari,
Delhi-110084.

....Defendant

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Date of institution of suit 14.03.2023

Date on which reserved for judgment 29.01.2025

Date of pronouncement of judgment 30.01.2025
Decision Decreed

SUIT FOR RECOVERY OF RS.2,00,000/-

JUDGMENT

Note: The present suit was initially filed u/O XXXVII of CPC, however, vide order dated 15.03.2023 the same was converted into an ordinary suit of recovery upon recording of separate statement of Ld. Counsel for plaintiff in this regard.

BRIEF FACTS

1. The brief facts as culled out from the plaint are that the defendant induced the plaintiff to enter into the security agreement dated 08.10.2020 for the period of 24 months in respect of the property bearing No.7/25, First Floor, situated at Uttarakhand Enclave, Kamal Pur Majra, Delhi-110084 (hereinafter referred to as the suit property) and plaintiff paid a sum of Rs. 2,00,000/- to the defendant as security amount with interest @ 3.5% per month for a period of 24 months and the said amount shall be treated as rent for the aforesaid period. That the defendant told that his friend Suraj Singh is the owner of the said house. That it was mutually agreed between the parties that after 24 months the plaintiff shall vacate the suit property and the defendant will return the sum of Rs. 2,00,000/-.

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2. That the defendant issued a cheque bearing No.798969 of Rs.2,00,000/- drawn on Syndicate Bank, Burari Branch, Delhi which was dishonoured and despite demand of the aforesaid amount, the same was not returned by the defendant and hence the present suit.

3. Summons of the suit have been served on the defendant and after appearance, Written statement was filed on behalf of defendant.

WRITTEN STATEMENT

4. It is the case of the defendant that he is a property dealer and he showed the suit property in question to the plaintiff and thereafter the owner of the said property let out the same to the plaintiff. The defendant has denied taking of any loan from the plaintiff. The defendant has contended that the security agreement relied upon by the plaintiff is false and fabricated and no such agreement was executed between the parties.

5. Following issues were framed in the present suit and the matter was listed for plaintiff evidence.

ISSUES

1. Whether the plaintiff is entitled to recovery of Rs.2,00,000/- along with pendente lite and future interest @ 3.5% per month, as prayed for? OPP

2. Relief SAHIL KHURMI CS SCJ 587/2023 KHURMI Date:

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6. In order to prove his case, the plaintiff has got examined himself as a witness PW-1 and reiterated the averments made in the plaint and tendered evidence by way of affidavit Ex.PW1/A and relied on the following documents:-

Ex.PW1/1 Security Agreement dated 08.10.2020.

(OSR).

Ex.PW1/2 Office copy of legal demand notice dated 19.10.2020.

Ex.PW1/3 Office copy of legal demand notice dated 27.01.2023.

Ex.PW1/4 Photocopy of cheque dated 13.01.2023.

(OSR) Ex.PW1/5(colly) Original postal receipts.

Ex.PW1/6 Copy of Aadhar card. (OSR)

7. PW-2 Sh. Parveen Kumar was the witness to the security agreement who tendered evidence by way of affidavit Ex.PW2/A and relied on Ex.PW2/1 i.e. the photocopy of aadhar card. (OSR).

8. PW-3 Smt. Asha Devi was the other witness to the security agreement who tendered evidence by way of Ex.PW3/A and relied on Ex.PW3/1 i.e. photocopy of aadhar card. (OSR).

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9. PW-1, PW-2 and PW-3 have been duly cross examined and discharged. Thereafter PE was closed on separate statement of plaintiff.

10. It is pertinent to mention that no defence evidence has been led on behalf of defendant and the separate statement of Ld. Counsel for defendant has also been recorded to this effect. Thereafter matter was listed for final arguments.

11. Final arguments were heard on behalf of both parties. Record of the case file has been perused carefully.

FINDINGS ON ISSUES Whether the plaintiff is entitled to recovery of Rs.2,00,000/- along with interest @ 3.5% per month? OPP

12. The onus to prove this issue is on the plaintiff. It is the case of the plaintiff that plaintiff entered into the security agreement dated 08.10.2020 in respect of the suit property and paid a sum of Rs. 2,00,000/- to the defendant with interest @ 3.5% per month for a period of 24 months on the condition that the aforesaid sum shall be repaid by defendant after vacation of the premises by plaintiff after 24 months. It was also agreed that the rent of the premises shall be borne by the defendant to its owner Suraj Singh in lieu of the interest amount on the aforesaid loan. It is stated by the plaintiff that the defendant issued the cheque in question for a sum of Rs. 2,00,000/- which was dishonoured and hence the present suit for recovery of sum of Rs. 2,00,000/- has been filed.

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13. The defendant has not lead any defence evidence. It is also pertinent to mention that the Security Agreement placed on record by the plaintiff is the most vital document but not even a single suggestion was given by the defendant to the plaintiff in his cross-examination that the security agreement is false and fabricated or that the same doesn't bear the signatures of the defendant or that and the same was never executed by the defendant. The same is fatal to the defence of the defendant.

14. It is also pertinent to mention that the defendant has not made any whisper as to how his cheque (impugned cheque) got into the hands of the plaintiff. Section 109 of Bhartiya Sakshya Adhiniyam, 2023 provides that, "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." Thus, the onus to prove how the cheque of the defendant reached the hands of the plaintiff was on the defendant, which the defendant has miserably failed to prove.

15. The defendant didn't even whisper in his pleadings whether the signature on the impugned cheque belongs to him or not. It was the bounden duty of the defendant to explain how his cheque got into possession of the plaintiff. No plausible explanation has been given by the defendant. Even if for the sake of argument, it is presumed that the cheque of the defendant was misused by the plaintiff, any prudent person ought to have made police complaint or given instructions to the bank for stopping the payment. No such steps were taken by the defendant.

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EVASIVE DENIALS BY THE DEFENDANT:

16. The defendant has denied all the allegations in the plaint evasively without leading any cogent or clinching evidence. The defendant has even evasively denied the avertments of dishonor of cheque issued by him to the plaintiff, without even whispering as to how his cheque reached the hands of the plaintiff. Order VIII Rules 3 and 5 of the Civil Procedure Code, 1908 (CPC) clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. It was further held that the written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.

17. Order VIII Rule 3 CPC provides that:

Denial to be specific.

It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

18. This rule deals with the denial to be specific. It states that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the CS SCJ 587/2023 Digitally signed by SAHIL SAHIL KHURMI KHURMI Date:

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19. Order VIII Rule 5 of CPC provides that:

5. Specific denial.

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

20. In *Thangam and Another v. Navamani Ammal* 2024 INSC 164 it was held by Hon'ble Supreme Court that Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient.

21. In Badat and Co. Bombay Vs. East India Trading Co AIR 1964 SC 538, it was held by Hon'ble Supreme Court that:

"The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted.

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22. In the present case, the defendant has given evasive denial in his written statement to the plaint of the plaintiff. As per Order VIII Rule 3 and 5 CPC, a general or evasive denial is not treated as sufficient. Since the denial of plaint of the plaintiff is not specific but evasive, the said facts shall be taken to be admitted.

TESTIMONY OF PW-2 AND PW-3

23. Learned counsel for the defendant has argued that PW-2 and PW-3 had deposed in their testimony that the money in question was given by cheque by the plaintiff, which is contrary to the pleadings of the plaintiff that the money in question was given by cash. Learned Counsel for the plaintiff had contended that the witness PW-2 and PW-3 to the Security Agreement deposed after four years of execution of the said Security Agreement and due to lapse of memory the aforesaid contradiction occurred. Learned Counsel for the plaintiff further contended that the said witnesses actually meant to say that the defendant issued the cheque to the plaintiff and not vice versa.

24. At this juncture, it is profitable to refer to Section 94 and Section 95 of Bhartiya Sakshya Adhiniyam 2023 (earlier Section 92 and 93 of Indian Evidence Act).

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Section 94 of Bhartiya Sakshya Adhiniyam 2023 When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Section 95 of Bhartiya Sakshya Adhiniyam 2023 When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a

document, have been proved according to section 94, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

25. Sections 94 and 95 of the Bhartiya Saksham Adhiniyam 2023 deal with the concept of the best evidence rule. Providing importance to documentary evidence over the oral ones, the provisions of the Evidence Act establish the fact that it is the documentary evidence that qualifies the ambit of the best evidence rule in the majority of the cases, leaving behind the oral evidence.

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26. The Supreme Court of India in the 2003 case of Roop Kumar v. Mohan Thedani 2003 AIR SCW 2425 observed that Section 91 of the Indian Evidence Act, 1872 prohibits proof of the contents of any writing in any other mode other than writing itself, embodying the best evidence rule declaring a doctrine of substantive law. The Court went further to observe that Section 91 and 92 of the Act though differ in material particulars, supplements each other to establish the best evidence rule.

27. In the present case, the Security Agreement dated 08.10.2020 clearly mentions that the plaintiff had given Rs.

2,00,000/- in cash to the defendant. Thus, the witnesses PW-2 and PW-3 are precluded and prohibited from giving oral evidence to the effect that the said money was given by cheque due to bar of Section 94 and Section 95 of Bhartiya Sakshya Adhiniyam 2023 (earlier Section 92 and 93 of Indian Evidence Act). The said contradiction in the testimony of PW-2 and PW-3 is immaterial and doesn't go to the root of the present case. PW-2 and PW-3 are witnesses to the Security Agreement executed between the plaintiff and defendant. They have deposed that the signatures on the Security Agreement belong to them. Thus, they have supported the case of the plaintiff. Mere suggestions have been given by Learned Counsel for the defendant that the signatures on Security Agreement doesn't belong to the witnesses. It is a settled law that mere suggestions do not amount to any proof. Both the said witnesses to the security agreement proved and supported the case of the plaintiff. Nothing was extracted from their cross examination in order to demolish the case of the plaintiff or to fortify the case of the defendant.

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2025.01.30 16:30:50 +0530 NON JOINDER OF SURAJ SINGH

28. Learned Counsel for the defendant has argued that the present suit is bad for non-joinder of Sh Suraj Singh. At his juncture, it is imperative to distinguish between a necessary and proper party to a suit.

NECESSARY PARTY TO SUIT

29. A necessary party is one whose presence in a legal proceeding is essential for the court to make a complete and effective judgment. If a necessary party is not joined, the court may not be able to resolve the matter fully, and the judgment may be ineffective or incomplete. The absence of a necessary party can lead to the dismissal of the case or a judgment that cannot be enforced.

PROPER PARTY TO SUIT

30. A proper party is one who has a legitimate interest in the subject matter of the litigation but whose presence is not essential for the court to render a complete judgment. The presence of a proper party may help the Court in better adjudication but the Court can still proceed with the case even if a proper party is not joined, as their absence does not prevent the court from making a decision.

31. In the present case, Sh. Suraj Singh who is the owner of the property taken on rent by the plaintiff is a proper party and not a necessary party. The Security agreement was executed CS SCJ 587/2023 Digitally signed Page No.12 of 14 SAHIL by SAHIL KHURMI KHURMI Date: 2025.01.30 16:30:55 +0530 between the plaintiff and the defendant. The said Suraj Singh is neither a party to the said security agreement nor a witness to it. No Doubt, had the plaintiff brought Sh. Suraj Singh as a witness it would have further fortified the case of the plaintiff that the property of Sh. Suraj Singh was taken on rent by the plaintiff in lieu of money advanced by the plaintiff to the defendant and the rent of the property was paid by defendant to Sh. Suraj Singh for few months in lieu of interest amount. Absence of plaintiff bringing Sh. Suraj Singh as a witness, would not prevent the Court from adjudicating the present case. Thus the submissions of learned Counsel for the defendant that the present suit is bad for non-joinder of Sh. Suraj Singh is devoid of any merits.

32. For the reasons aforementioned this Court has come to irresistible conclusion that the defendant has miserably failed to bring anything in his defence and on the other hand, the plaintiff has been successful in proving his case on the preponderance of probability. Accordingly, the present issue is decided in favour of plaintiff and against the defendant.

33. Plaintiff has prayed for interest @ 3.5% per month, which seems exorbitant to this Court and the interest of justice would be met if the interest @ 9% per annum is granted from the filing of the present suit till its realization.

RELIEF

34. In view of aforesaid discussion, the present suit is decreed in favour of plaintiff and against the defendant for a sum of KHURMI Date:

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35. Costs of the suit is awarded to the plaintiff against the defendant.

36. Decree sheet be prepared accordingly.

37. File be consigned to the record room after due compliance.

Announced in the open

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Court on 30.01.2025

KHURMI Date: 2025.01.30
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(SAHIL KHURMI)
Civil Judge-1, Central District,
Tis Hazari Courts, Delhi