

Shri Monto Chadha vs Shri Manoj Kumar Bhatnagar on 23 October, 2021

IN THE COURT OF SENIOR CIVIL JUDGE CUM RENT
CONTROLLER (WEST), TIS HAZARI COURTS, DELHI
Presided by : Ms. Susheel Bala Dagar

RCA No. 354/16
CNR Number : DLWT-03-001065-2015
Shri Monto Chadha
S/o Shri S.C. Chadha,
R/o B-6/34 & 35, Second Floor,
Sector-11, Rohini, Delhi-110085.

.....Appellant

Versus

1. Shri Manoj Kumar Bhatnagar
S/o Shri Suresh Bhatnagar
R/o House No. A-2/35,
Prateek Apartments, LIG Flats,
Paschim Vihar, New Delhi-110087.

2. Shri Raman Kumar
S/o Shri Madan Lal
Shop No. A-2/1, DDA Market,
Raman Properties, Opposite C Apartments,
Paschim Vihar, New Delhi.

.....Respondents

Date of Institution	:	29.05.2015
Date on which judgment was reserved	:	12.10.2021
Date of pronouncing judgment	:	23.10.2021

Regular First Appeal Under Section 96 CPC Against the Impugned
Judgment and Decree dated 30.04.2015 passed by Ld.Civil Judge,
West-2, Tis Hazari Courts, Delhi in Civil Suit No. 123/09, Titled as
Shri Monto Chadha v. Manoj Kumar Bhatnagar.

Judgment

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1. The present appeal has been filed by the appellant against the
judgment and decree dated 30.04.2015 passed by Ld.Civil Judge, West-
2, Tis Hazari Courts, Delhi in Civil Suit No. 123/09, titled as Shri Monto
Chadha v. Manoj Kumar Bhatnagar. whereby, the suit for permanent
injunction was dismissed by the Ld. Trial Court.

Facts of the case

2. The brief facts of the case as per the plaint are that the defendants were known to the plaintiff for the last many years and that the plaintiff was having good, cordial and friendly relations with them. It is further submitted that the defendants had evil eye on the residence and shop of the plaintiff and they hatched a plan to grab the properties of the plaintiff by getting some blank stamp papers and cheques signed from the plaintiff, illegally and fraudulently taking undue advantage of the good faith of the plaintiff. That in the month of February 2009, the defendant met the plaintiff and requested him to have dinner with them and they also gave some intoxicated substance to the plaintiff and under the influence of the said intoxication they pressurized the plaintiff to sign some blank stamp papers and some blank cheques, by exercising coercion, by fraudulent means and exercising undue influence upon the plaintiff and the plaintiff could not resist their illegal actions as he was heavily intoxicated by the defendant no. 1 and 2. It is further submitted that the complaint dated 22.04.2009 was lodged by the plaintiff with the SHO, PS Prashant Vihar, Delhi and other higher authority concerned.

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3. It is further submitted that the said cheques and stamp papers, were got signed from the plaintiff by exercising fraudulent means, coercion and undue influence upon him and the said defendants are consistently extending threats to murder the plaintiff and his family members.

4. It is further submitted that the plaintiff has come to know from the friendly circle that the above mentioned defendants are going to misuse the said blank papers illegally for fabricating loan agreement or earnest money agreement illegally regarding any of the above mentioned properties belonging to the plaintiff and in fact no monetary transaction ever took place between the plaintiff and the defendants. The defendants have been giving threats to the plaintiff and his wife by making threatening and abusive telephonic calls to their personal numbers for meeting their illegal motives.

5. It is further submitted that the plaintiff requested the defendants on various occasions to return the said blank stamp papers and cheques and not to misuse the said documents, however, no need was paid to his requests and consequently legal notice dated 24.04.2009 was sent under registered cover and UPC to the defendants thereby calling upon them not to misuse the said blank papers for fabricating loan agreement or earnest money agreement regarding properties of the plaintiff and not to present any cheque for encashment fraudulently got issued from the plaintiff, as no monetary transaction took place between the plaintiff and the defendants. Therefore, the present suit has been filed by the plaintiff seeking the relief of declaration, mandatory and permanent injunction. RCA No.

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Grounds of appeal

6. Ld. Trial Court failed to appreciate that the alleged loan agreements dated 25.11.2008 and 25.02.2009 placed on record by the respondents no. 1 & 2, did not mention the date of alleged post dated cheque no. 549329 issued by the appellant in the name of the respondent no. 1. Another agreement drafted in Hindi mentions the post dated cheque dated 25th May 2009, bearing no. 574907. There are contradictory statements of the respondents witnesses regarding filling the details of the above mentioned cheques. On the other hand, the cheque no. 574907 bears the date as 30.05.2009 which is filed in suit no. 555/2013 before Rohini Courts, Delhi. Ld. Trial Court has failed to appreciate that the alleged witnesses on the loan agreements are having friendly relations with the respondents no. 1 & 2, who are doing business of property dealing. There are contradictions in the statement of DW4 and DW5.

7. Ld. Trial Court has failed to appreciate that despite service of the prior notice dated 24.04.2009 upon the respondent no. 1 & 2 which contained their valid and correct address and both of them admitted the service of the notice upon them and also admitted the correctness of the said address in their examination before the Trial Court, they failed to give any reply to the said legal notice. No monetary transaction took place between the parties and even three civil suits on the basis of misused cheques were filed subsequent to the filing of the present suit before the Ld. Trial Court and demand notices were issued by the Counsel for the respondents no. 1 & 2 in June 2009 after service of summons of the present suit upon the respondent no. 1 & 2.

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8. Ld. Trial Court failed to appreciate that the appellant was taken to some unknown place by the respondent no. 1 and 2 on 25.02.2009 on the pretext of having dinner with them and during the dinner some intoxicated substance was administered in cold drink and taking benefit of undue advantage of unconsciousness of the appellant, the respondent no.1 and 2 got signatures of the appellant on the some blank stamp papers and bank cheques and at the time of filing the present suit the appellant was not aware about the exact location and name of the place of dinner and subsequently the appellant came to know about the details of the said place from Mr. Mahesh Kumar, which was defunct Hotel namely Hotel Paras, Paschim Vihar, New Delhi and the respondents No. 1 and 2 were very well known to the caretaker of the said Hotel which is located

near the residence and business premises of the respondent no. 1 & 2.

9. Ld. Trial Court failed to appreciate that the appellant is a chronic asthmatic patient and he used to remain bed ridden for several days together due to unconsciousness on account of asthma attack and medicines effect and due to this reason police complaint was not lodged immediately after the incident of 25.02.2009 regarding getting blank stamp papers and blank cheques signed from the appellant fraudulently. Ld. Trial Court failed to appreciate that wife of respondent no. 1 Smt. Savita Bhatnagar in Civil suit no. 927A/2009 in Rohini Courts, Delhi stated that the cheque no. 549326 was issued and handed over by the appellant on 26.05.2009 at the office of Mr. Raman Kumar by the appellant but as per the alleged loan agreement it was handed over to Mr. RCA No. 354/16 Monto Chadha v. Manoj Kumar Bhatnagar Page No. 5 of 14 SUSHEEL BALA DAGAR BALA Date:

2021.10.23 DAGAR 17:30:18 +0530 Manoj Bhatnagar on 25.11.2008, which is contradictory to the statement given by Ms. Savita Bhatnagar. The Ld. Trial Court failed to appreciate that Ms. Savita Bhatnagar wife of respondent no. 1, admitted in Rohini Court in Civil Suit no. 927A/09 that at the time of issuance of cheque no. 549326, herself, Raman, her husband Manoj were present there and their peon was also present, but no other person was present and she did not disclose about the presence of alleged attesting witnesses and on the other hand the alleged attesting witnesses deposed that they were also present at the time of execution of the alleged loan agreement and issuance of cheque no. 549326 and alleged attesting witnesses did not mention the presence of peon and Ms. Savita Bhatnagar at the time of execution of the alleged loan agreement and issuance of above mentioned cheque.

10. Ld. Trial Court failed to appreciate that attesting witness Raj Kumar, DW4 stated in his cross examination that two cheques were handed over in May 2008 again said November 2008 by the appellant to the respondent no. 1 in the Rohini Courts, however on the other hand in the present suit DW5 Naveen Gupta stated that only one cheque was handed over by the appellant in favour of the respondent no. 1, which is self contradictory on behalf of the respondent no.1 and 2. Ld. Trial Court failed to notice that cost of Rs. 3500/□was imposed on respondent no. 1 & 2 for delay in filing written statement. In order to take time for fabrication of stamp papers and forging of documents including cheques and written statement was filed by the respondent no. 1 & 2.

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11. Ld. Trial Court completely ignored the material fact that DW1, DW2, DW3 and DW4 deposed in their evidence that stamp papers of the alleged loan agreements were purchased by the appellant and the same were also got typed by the appellant, but on the other hand the certified copy of the

extract from the Stamp Vendor Register clearly shows that the stamp paper in the name of the appellant was purchased by the respondent no. 1 and he also signed in the stamp vendors register at the time of purchasing the same. An application for placing on record the certified copy of the stamp vendor register was wrongly dismissed by the Ld. Trial Court. Ld. Trial Court wrongly refused to take on record the evidence given by the respondent no. 1 & 2, wife of respondent no. 1 and the other alleged attesting witnesses in three counter civil suits filed by the respondent no. 1 & 2 and Ms. Savita Bhatnagar and the Ld. Trial Court completely ignored the facts that the evidence given in the Rohini Courts in the Civil Suits connected with the present matter, was very material and necessary for determination of the issues involved in the present suit as the said suits were filed by misusing the blank stamp papers and cheques.

12. Ld. Trial Court has ignored the material contradiction in the statement of DW1 Manoj Bhatnagar who stated that a sum of Rs. 1,25,000/- in cash was given as loan to the appellant, which was taken by him as loan from his friend Mr. Deepak Arora and Mr. Deepak Arora was also present at the time of advancing the alleged loan to the appellant, but said Deepak Arora was not produced in the witness box nor there is any attesting witness by Mr. Deepak Arora. Ld. Trial Court RCA No. 354/16 Monto Chadha v. Manoj Kumar Bhatnagar Page No. 7 of 14 SUSHEEL BALA DAGAR BALA Date:

2021.10.23 DAGAR 17:30:29 +0530 has ignored that respondent no. 1 & 2 failed to produce their income tax returns for the year 2008-09 as to show if any monetary/ financial transaction took place between the appellant and the respondents and further they failed to disclose their source of income so as to substantiate the story of alleged loan transaction and further they were living in rented accommodations and were not having ample financial resources to advance the alleged loans to the appellant. Ld. Trial Court has ignored that what was the reason to advance friendly loan in favour of the appellant again in the year 2008-09, if the appellant had not returned the previous loan from his wife of the respondent no. 1 allegedly taken in the year 2007. Ld. Trial Court has totally ignored the fact that the alleged loan agreement dated 25.02.2009 with respondent no. 2 contained the alleged post dated cheque no. 574907 dated 25.05.2009, but copy of the said cheque with date of 30.05.2009 was placed on record with the alleged loan agreement dated 25.02.2009.

13. Ld. Trial Court has ignored as to why only one cheque of Rs. 1,50,000/- was received by the respondent no. 2 as security for returning of loan of Rs. 3,00,000/- which is his alleged own earned money out of property dealing business, but on the other hand in Rohini Court Mr. Raman Kumar stated monetary liability of Rs. 3,00,000/- also included some unknown liability towards Mr. Manoj Bhatnagar. There is no witness of the alleged previous loan of Rs. 1,50,000/- alleged given on 10.02.2009. Ld. Trial Court has ignored that the stamp paper for fabricating alleged loan agreement dated 25.02.2009 was purchased by the same stamp vendor from where the stamp paper of alleged loan RCA No. 354/16 Monto Chadha v. Manoj Kumar Bhatnagar Page No. 8 of 14 Digitally signed by SUSHEEL SUSHEEL BALA DAGAR BALA Date:

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agreement dated 25.11.2008 was purchased by Mr. Manoj Kumar Bhatnagar. Ld. Trial Court has ignored that the alleged stamp papers and blank cheques had been forged and fabricated by the respondent no. 1 and his wife, respondent no. 2 and the alleged attesting witnesses who are engaged in the same business i.e. property dealing, residing in the same locality. Ld. Trial Court did not consider that the evidence and documents on record and the Ld. Trial Court overlooked all these admitted facts and as such the impugned judgment is liable to be set aside.

Reply to the grounds of appeal by respondent

14. Reply was filed by the respondents stating therein that the present appeal was filed by the appellant without any cause and reason just to linger on the matter. The appellant is in the habit of raising questions without any grounds or reason just to linger the matter so that he may gain time. The present appeal is having no legal grounds or questions which are not answered by the Ld. Trial Court. In the appeal the appellant has leveled many false and frivolous allegations against the respondents which show his malafide intention for not paying the loan which he has taken from respondents. As per agreement dated 25.11.2008 the defendant (Shri Manoj Bhatnagar) had extended a total loan of Rs. 2 lacs to the appellant i.e. Rs. 75,000/- from his wife's account through a cheque no. 322036 in favour of appellant and had extended cash of Rs. 1,25,000/- as on date 25.11.2008. The bank transaction has been proved as well as the cash transaction. The defendant Raman Kumar had extended a total sum of Rs. 3 lacs in cash RCA No. 354/16 Monto Chadha v. Manoj Kumar Bhatnagar Page No. 9 of 14 SUSHEEL by SUSHEEL BALA Date:

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to the appellant as per his agreement. In his evidence, the appellant has not denied any of the agreements and the bank transaction. In evidence the respondents had proved their transactions. It is alleged by the appellant that the respondents had visited on various occasions at the work place of the appellant. It is argued that neither any neighbour nor any staff has been made as a witness to the occasion. No witness turned in favour of the appellant who has admitted this fact.

15. The cheque return memo of the cheques, which are exhibited herein does not have any reasons other than funds insufficient. It is further argued that if a person in a drunken state had filled and signed the cheque as his original signature why not the memo contains the reason that the signatures does not match. Rather the memo states funds insufficient. A person who has voluntarily intoxicated himself cannot be allowed to take advantage of intoxication.

16. Thereafter an application under Order 41 Rule 27 CPC was moved on behalf of the appellant/plaintiff for leading additional evidence which was allowed by the Ld. Predecessor on 16.09.2016. Appellant examined PW1 Shri Sanjeev from SDM Office, Rajouri Garden who produced the summoned records relating to the stamp paper purchased on 24.11.2008 entered in the register issued on date 19.08.2008 as Ex. PW1/1. Appellant also examined the handwriting expert Shri B.N. Srivastava as PW2 who tendered his evidence by way of affidavit Ex. PW2/A. PW2 examined the disputed signature of the respondent Manoj with the comparative signatures and gave the opinion that the disputed signatures has been written by respondent Manoj. PW2 has given his report dated

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04.10.2018 as Ex. PW2/1 alongwith the photographs and CD. After closure of the appellant evidence the matter was listed for final arguments.

Arguments on the appeal have been heard.

17. Shri K.B. Shankar, Ld. Counsel for the appellant and Shri Sohan Lal, Ld. Counsel for respondents have also filed written synopsis of their arguments. I have perused the record and the written synopsis of arguments filed by both the parties. Ld. Counsel for the appellant has filed following case laws in support of his arguments : Mariam Hussain v. Syedani 2007 STPL 5863 Karnataka, Bama Kathari Patil v. Rohidas Arjun Madhavi 2004 STPL 3152 Bombay, Om Prakash Berlia v. Unit Trust of India 1982 STPL 2176 Bombay, Kalyan Peoples' Co-Operative Bank Ltd. v. Dulhanbibi Aqual Aminsahab Patil 1962 STPL 1128 SC, Harish Loyalka v. Dileep Nevatia Suit o. 3598 of 1996 decided on 07.04.2014 of the Hon'ble High Court of Bombay, Subhash Chander v. Shri Bhagwan Yadav CM(M) 171/2009 decided on 25.11.2009 of Hon'ble High Court of Delhi, Madholal Sindhu v. Asian Assurance Co. Ltd. (1954) 56 BOMLR 147, M/s Mangilal Rungta, Calcutta v. Manganese Ore (India) Ltd. Nagpur 1986, STPL 801 Bombay, Narbada Devi Gupta v. Birendra Kumar Jaiswal 2003 STPL 16880 SC, Ved Parkash Kharbanda v. Vimal Bindal 2013 STPL 9764 Delhi.

18. It is the contention of the appellant that in the state of intoxication his signatures were obtained on some blank stamp papers and blank RCA No. 354/16 Monto Chadha v. Manoj Kumar Bhatnagar Page No. 11 of 14 SUSHEEL BALA DAGAR BALA Date:

2021.10.23 DAGAR 17:30:57 +0530 cheques by the respondents. Hence, he filed the suit before the Ld. Trial Court to get the said stamp papers and blank cheques which were got signed by the respondent to be declared illegal, null and void. On the other hand, the respondent has contended that the appellant had taken loan from the respondent no. 1 and his wife and also from respondent no. 2 and had issued the cheques in lieu of loan. The said cheques were returned dishonored, so the respondents issued notice to the appellant.

Hence, in order to avoid the liability the appellant has filed this suit before the Ld. Trial Court and now filed this appeal.

19. It is admitted case of the appellant that the cheques and the stamps papers bear the signatures of the appellant. The appellant has not been able to explain that in case his signatures were obtained by way of coercion and undue influence as alleged by him, then why he has not stopped the payment of the alleged cheques. Moreover, the police complaint had been made by the appellant after approximately two months of alleged incident and the delay in filing the police complaint is also not explained. The appellant has also not proved any medical documents on record showing his alleged

intoxication. The legal notice which is stated to be issued by the appellant was issued after approximately two months of the said incident and the said delay is also not explained. All this raises doubt on the version of the appellant and the said version of the appellant does not inspire confidence.

20. Another contention of the appellant is that the stamp papers were purchased by the respondent Manoj and not by the appellant as per the RCA No. 354/16 Monto Chadha v. Manoj Kumar Bhatnagar Page No. 12 of 14 SUSHEEL BALA DAGAR BALA Date:

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21. The appellant has already admitted his signatures on the stamp papers and the cheques. Hence, there is presumption of liability against the appellant. Even if the stamp papers were purchased by the respondent as per the additional evidence, then also the purchase of stamp papers by the respondent does not absolve the liability of the appellant, when his signatures are admitted. Moreover, financial transactions between the parties have been proved by the respondent by leading evidence during the trial stage. The appellant has failed to show why he was carrying his cheque book in case he was called for a dinner by the respondents. The appellant during cross-examination has categorically stated that he does not carry his cheque book all the time with him.

22. Further, human memory is not infallible and with the lapse of time memory fades. Hence, in case the witness who were examined are not able to recall who all were present at the time of signing of the stamp papers or the cheques, the same is not going to absolve the liability of the appellant when he himself admitted to have signed the stamp papers and the cheques in question. In such a situation, I do not find any infirmity in the order of the Ld. Trial Court.

23. Moreover, as per Section 41(b) of the Specific Relief Act an injunction cannot be granted to restrain any person from instituting or prosecuting any proceedings in a Court not subordinate to that from which the injunction is sought. Hence, the relief of permanent injunction RCA No. 354/16 Monto Chadha v. Manoj Kumar Bhatnagar Page No. 13 of 14 SUSHEEL BALA DAGAR BALA Date:

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24. As there is no infirmity found in the judgment and decree passed by Ld. Trial Court, the order of the Ld. Trial Court is upheld. The appeal of the appellant stands dismissed with costs. Decree sheet be prepared accordingly. Trial Court record be sent back to the concerned Court with copy of this order. The register of the SDM Office be sent back to the concerned office. The appeal file be consigned to record room.

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Announced in open Court
on 23rd Day of October 2021

(Susheel Bala Dagar)
SCJ cum RC(West)
Tis Hazari Courts, Delhi.

(This judgment contains 14 pages.)

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