Adarsh Rani Bedi vs Of on 18 October, 2023

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA RSA No. No. 379 of 2022 Reserved on: 07.10.2023 .

Date of Decision: 18th October, 2023 Adarsh Rani Bedi ....Appellant.

Versus of Shashi Pal Sharma ....Respondent.

Coram rt Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting? Yes For the Appellant : Mr. M.L.Sharma, Advocate.

For the Respondent : Mr. Rajesh Mandhotra, Advocate.

Rakesh Kainthla,Judge.

The present appeal is directed against the judgment and decree dated 29.06.2022, passed by learned District Judge, Kangra, at Dharamshala, District Kangra, H.P., vide which, the appeal filed by the present appellant (defendant before the learned Trial Court) was dismissed. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

_____ Whether reporters of the local papers may be allowed to see the judgment? Yes

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a Civil Suit seeking recovery of .

9,80,000/- (Rupees Nine Lacs & Eighty Thousand only) along with interest @10% per annum. It was pleaded that the defendant is running a School in the name & style of Kangra Valley Senior Secondary School, Sheela Chowk, Tehsil Dharamshala, of District Kangra, H.P. The parties have cordial relations like family members. The defendant contacted the plaintiff in August 2008 rt and told him that she required an amount of 7,00,000/- (Rupees Seven Lacs only) for the school. She promised to return the amount after one year. The plaintiff agreed to this proposal and issued the two cheques of 2,50,000/- (Rupees Two Lacs Fifty Thousand) each. He also paid an amount of 2,00,000/- (Rupees Two Lacs) in cash. The defendant issued a post-dated cheque dated 02.09.2009 for 7,00,000/- (Rupees Seven Lacs) in favour of the plaintiff drawn on State Bank of India, Dharamshala Branch. The defendant encashed the cheques issued by the plaintiff. The plaintiff presented the said cheque after 02.09.2009, but the said cheque was dishonoured with the remarks "Refer to Drawer". The plaintiff requested the defendant to pay the amount.

He also served a legal notice upon the defendant for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act. The notice was duly served upon the .

defendant. However, the defendant did not pay the amount;

hence, the suit was filed to seek recovery of the amount.

3. The suit was opposed by filing a written statement, taking preliminary objections regarding lack of maintainability, of cause of action and jurisdiction, the plaintiff being estopped by his act and conduct to file the suit, the plaintiff having suppressed rt material facts from the Court, the suit being barred by limitation and the suit having not been properly valued for the purpose of Court fee and jurisdiction. The contents of the plaint were denied on merits. It was asserted that the school is run by the Kangra Valley Public Education Society and she is only Secretary of the Society. One President and other Members of the Society runs the school. The defendant obtained 70,000/-(Rupees Seventy Thousand only), from the plaintiff and the plaintiff obtained a blank cheque against the security with the promise to return the same after the payment of 70,000/- (Rupees Seventy Thousand only). The defendant returned 70,000/- in three instalments of 15,054/- on 06.10.2008, 28,084/- on 5.12.2008 and 28,084/-

on 09.01.2009. The plaintiff did not return the cheque and misused the same. The defendant approached the plaintiff after .

receiving the notice and enquired from him about the misuse of the cheque. The plaintiff told her that he had mistakenly presented the cheques and issued a legal notice. In fact, one Veena Sharma had taken 7,00,000/- (Rupees Seven Lacs) from of the plaintiff and he wrongly presented the cheque of the defendant instead of the cheque of Veena Sharma. He told the rt defendant that he had torn the cheque and there was no need to worry. The defendant believed the representation made by the plaintiff. The suit was filed without any basis; hence, it was prayed that the same be dismissed.

4. A replication denying the contents of the written statement and those of the plaint was filed.

5. Learned Trial Court framed the following issues on 30.07.2013:

1. Whether the plaintiff is entitled to recover the suit amount as alleged? OPP

2. Whether the suit is not maintainable in the present form?OPD.

3. Whether the plaintiff has no cause of action to file the present suit?OPD.

4. Whether the plaintiff estopped from filing the suit by way of his act and conduct? OPD.

5. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD.

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6. Whether the suit is time barred by provision of limitation? OPD.

7. Relief.

6. The parties were called upon to produce their evidence and the plaintiff examined Sunita Sharma (PW-1), Ankush of Sharma (PW-2), Pawan Rana (PW-3), Sunita Sharma (PW-4), Narinder Kumar Nanda (PW-5), Khem Raj (PW-6), and himself rt (PW-7). The defendant examined herself (DW-1).

7. The Learned Trial Court held that the cheque carried a presumption of consideration. The version of the plaintiff regarding the advancing of the money was duly proved by the issuance of two cheques of 2,50,000/- (Rupees Two Lacs Fifty thousand), which were encashed by the defendant. This falsified the version of the defendant that she had taken 70,000/-(Rupees Seventy Thousand) from the plaintiff. The evidence of the defendant was insufficient to rebut the presumption attached to the cheques. The defendant had failed to prove that she had returned the money. The defendant had not pleaded that the Kangra Valley was a Co-operative Society registered under the Societies and Registration Act. Hence, issue no.1 was answered in the affirmative, rest of the issues were answered in the negative .

and the suit of the plaintiff was decreed.

8. Being aggrieved from the judgment and decree passed by the learned Trial Court, the defendant filed an appeal, which was decided by the learned District Judge, Dharamshala, District of Kangra, H.P. The learned First Appellate Court concurred with the findings of the learned Trial Court that the defendant had failed to rt rebut the presumption of consideration attached to the cheque.

The version of the plaintiff was duly corroborated by the issuance of the cheques of 2,50,000/- (Rupees Two Lacs Fifty Thousand) for which no explanation was provided by the defendant. The defendant had not taken any action against the plaintiff for misuse of the cheque, and her plea that a blank cheque was issued, which was misused, could not be accepted. The acquittal in a criminal case will not any affect the civil case; therefore, the appeal was dismissed.

9. Feeling aggrieved and dissatisfied with the judgments and decrees passed by the learned Courts below, the present appeal has been filed, asserting that the learned Courts below did not properly appreciate the evidence led before them. The suit was not maintainable and it was barred by limitation. No specific .

finding was given by the learned Courts below on the question of limitation. The suit was filed on 27.08.2012, for the recovery of money advanced on 02.09.2008. The suit was filed beyond the period of three years and could not be said to be within limitation.

of The learned Courts below ignored this aspect. The plaintiff failed to prove the existence of legally enforceable debt. The defendant rt had proved that she had taken 70,000/- from the plaintiff and this amount was returned. The complaint filed by the plaintiff for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act was dismissed but this fact was not

considered by the learned Courts below. Learned First Appellate Court failed to give findings on all the issues. The plaintiff was estopped by his act to file the present suit. Therefore, it was prayed that the present appeal be allowed and judgments and decrees of the learned Courts below be set aside.

10. The following substantial questions of law are proposed with the memorandum of appeal:-

1. Whether the impugned judgments and decrees passed by the learned Courts below are the result of misinterpretation/misreading of oral as well as documentary evidence available on record?

2. Whether the impugned judgment and decree is .

sustainable in the eyes of the law in view of the fact that the Ld. District Judge failed to take into consideration the judgment exhibit DI passed by Ld. CJM Dharamshala in Criminal Case No.10-III/10/2011, decided on 13.03.2014?

3. Whether the impugned judgment & decree dated 29.06.2022 is legally sustainable in the eyes of law on of the ground that the Ld. District Judge has failed to give its findings on all issues?

4. Whether the findings recorded by the learned Courts rt below are correct in law on the ground that presumptions attached to the execution of the cheque is rebuttable by no disclosure of source of income and receipt of payment?

5. Whether the Courts below have rightly come to the conclusion for the recovery of the amount without proving any agreement or contract of lending the money to the defendant/appellant and there is any legally enforceable debt?

6. Whether the learned Courts below are right in decreeing the suit of the plaintiff due to the fact that the suit is barred by limitation?

11. I have heard Mr. M.L. Sharma, learned counsel for the appellant/defendant and Mr. Rajesh Mandhotra, Advocate, for the respondent/plaintiff.

12. Mr. M.L.Sharma, learned counsel for the appellant/defendant submitted that the learned Courts below did .

not consider the evidence in its proper perspective. The judgment passed by the learned Chief Judicial Magistrate, Kangra, at Dharamshala, District Kangra, H.P. in Criminal Case No.10-III/10/2011 on 13.03.2014, acquitting the defendant was of ignored by the learned First Appellate Court.Therefore, it was prayed that the present appeal be admitted on the proposed rt substantial questions of law.

13. Mr. Rajesh Mandhotra, learned counsel, for the respondent/plaintiff supported the judgments and decrees passed by the learned Courts below and submitted that no interference is required with

them.

14. I have given considerable thought to the rival submissions at the bar and have gone through the records carefully.

15. The defendant did not specifically deny her signatures on the cheque in the written statement filed by her. She stated that a blank cheque was handed over as a security for the payment of 70,000/- taken by her. She admitted in her cross-examination that the cheque (Ext.PW-8/A) bears her signature. She also admitted that the cheque was in her handwriting. It was laid down .

by the Hon'ble Supreme Court of in K.P.O. Moideen kutty Hajee v.

Pappu Manjooran, (1996) 8 SCC 586, that once the promissory notice is proved to be executed, Section 118 (a) raises a presumption that it was for consideration. It was observed at pages 592- of

11. It would thus be clear that when the suit is based on pronote and the promissory note is proved to have been executed, Section 118(a) raises the presumption, until the contrary is proved, that the promissory note was made for rt consideration. That initial presumption raised under Section 118(a) becomes unavailable when the plaintiff himself pleads in the plaint different considerations. If he pleads that the promissory note is supported by a consideration as recited in the negotiable instrument and the evidence adduced in support thereof, the burden is on the defendant to disprove that the promissory note is not supported by consideration or different consideration other than one recited in the promissory note did pass. If that consideration is not valid in law nor enforceable in law, the court would consider whether the suit pronote is supported by valid consideration or legally enforceable consideration. Take, for instance, a pronote executed for a time-barred debt. It is still a valid consideration. The falsity of the plea of the plaintiff also would be a factor to be considered by the court. The burden of proof is of academic interest when the evidence was adduced by the parties. The court is required to examine the evidence and consider whether the suit as pleaded in the plaint has been established and the suit requires to be decreed or dismissed.

16. This position was reiterated in Bharat Barrel & Drum Mfg.

Co. v. Amin Chand Payrelal (1999) 3 SCC 35, wherein it was held:

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> 11. Section 118 of the Act deals with the presumptions as to negotiable instruments. One of such presumptions is,"that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration".

of This presumption is based upon a principle and is not a mere technical provision. The principle incorporated being inferring of a presumption of consideration in the case of a negotiable

instrument. A Full Bench of the Rajasthan High rt Court in Heerachand v. Jeevraj[AIR 1959 Raj 1: ILR (1958) 8 Raj 717] held:

> "Presumption, therefore, as to consideration is the very ingredient or negotiability and in the case of a negotiable instrument, the presumption as to consideration has to be made."

A Full Bench of the Andhra Pradesh High Court in G. Vasu v. Syed YaseenSifuddinQuadri, AIR 1987 AP 139 : (1987) 1 Andh LT 1 while dealing with the words "until the contrary is proved" held that it was permissible for the Court to look into the preponderance of the probabilities and the entire circumstances of the particular case. After referring to Sections 3, 4 and 101 to 104 of the Evidence Act, the Court held that while dealing with the absence of consideration, the Court shall have to consider not only whether it believed that consideration did not exist but also whether it considered the non-existence of the consideration so probable that a reasonable man would, under the circumstances of a particular case, act upon the supposition that the consideration did not exist. Once the defendant showed either by direct evidence or circumstantial evidence or by use of the other presumptions of law or fact that the promissory note was not supported by consideration in the manner stated therein, the evidentiary burden would shift to the plaintiff and the legal burden reviving his legal burden to prove that the promissory note was supported by consideration and at that stage, the presumption of law .

covered by Section 118 of the Act would disappear. Merely because the plaintiff came forward with a case different from the one mentioned in the promissory note, it would not be correct to say that the presumption under Section 118 did not apply at all. Such a presumption applies once the execution of the promissory note is accepted by the defendant. The circumstances that the plaintiff's case was of at variance with the one contained in the promissory note could be relied on by the defendant for the purpose of rebutting the presumption of shifting the evidential burden to the plaintiff. After referring to the catena of authorities rt on the point, the Full Bench held:

> "Having referred to the method and manner in which the presumption under Section 118 is to be rebutted and as to how it thereafter 'disappears' we shall also make reference to three principles which are relevant in the context. The first one is connected with the practical difficulties that beset the defendant for proving a negative, namely that no other conceivable consideration exists. We had occasion to refer to this aspect earlier. Negative evidence is always in some sort circumstantial or indirect, and the difficulty or proving a negative lies in discovering a fact or series of facts inconsistent with the fact which we seek to disprove (Gulson, Philosophy of Proof, 2nd Edn., p. 153 quoted in Cross on Evidence, 3rd Edn., p. 78 Fn).
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> In such situations, a lesser amount of proof than is usually required may avail. In fact, such evidence as renders the existence of the negative probable may shift the burden onto the other party (Jones, quoted in A. Sarkar on Evidence, 12th Edn., p. 870). The second principle which is relevant in the context is the one stated in Section 106 of the Evidence Act. That section states that when any fact is especially

within the knowledge of any person, the burden of proving that fact is upon him. It is very generally stated that, where the party who does not have the evidential burden, such as the plaintiff in this case, possesses positive and complete knowledge concerning the existence of fact which the party .

having the evidential burden, such as the defendant in this case, is called upon the negative or has peculiar knowledge or control of evidence as such matters, the burden rests on him to produce the evidence, the negative averment being taken as true unless disproved by the party having such knowledge or control. The difficulty of proving a negative only relieves the party having the evidential burden from of the necessity of creating a positive conviction entirely by his own evidence so that, when he produces such evidence as it is in his power to produce, its probative effect is enhanced by the silence of the opponent (Corpus Juris, Vol.

rt 31, para 113). The third principle that has to be borne in mind is the one that when both parties have led evidence, the onus of proof loses all importance and becomes purely academic. Referring to this principle, the Supreme Court stated in Narayan BhagwantraoGosaviBalajiwale v. Gopal VinayakGosavi [AIR 1960 SC 100: (1960) 1 SCR 773] as follows:

'The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic.' We have referred to these three principles as they are important and have to be borne in mind by the court while deciding whether the initial 'evidential burden' under Section 118 of the Negotiable Instruments Act has been discharged by the defendant and the presumption 'disappeared' and whether the burden has shifted and later whether the plaintiff has discharged the 'legal burden' after the same was restored.

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12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is .

supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as of a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be rt either direct or by bringing on record the preponderance of probabilities

by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non- existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and the Andhra Pradesh High Court in this regard."

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17. Similar is the judgment in Kapil Kumar v. Raj Kumar, (2022) 10 SCC 281: (2023) 1 SCC (Civ) 656, wherein it was observed:-

> "15. In view of the above facts and circumstances of the case emerging from the evidence on record, a non- examination of the witness to the pronote cannot be held of against the plaintiff. At this stage, it is required to be noted that as per the provision of Section 118 of the NI Act, there is a presumption of consideration in the negotiable instrument [Section 118(a)]. It is true that such rt presumption may be rebutted. However, no rebuttal evidence is led by the defendant. Under the circumstances also the High Court has erred in allowing the second appeal and quashing and setting aside the decree passed by the learned trial court confirmed by the learned first appellate court."

18. Therefore, the Court has to proceed with the presumption that the cheque was issued in the discharge of legal liability and the burden is upon the defendant to show that it was not so.

19. The defendant admitted that the plaintiff had issued two cheques of 2,50,000/- (Rupees Two Lacs Fifty thousand).

She stated that she had returned the amount within 15 days in cash. Learned Courts below had rightly held that there was no evidence of the payment of the money to the plaintiff. The defendant also relied upon the receipts (Mark A to Mark C) regarding the deposit of 28,084/-, 15,054/- and 28,084/- in .

the account of the plaintiff. If the defendant was careful enough to keep the receipts of the amount less than 50,000/- by depositing it in the bank account, it is difficult to believe that she would pay 5,00,000/- (Rupees Five Lakhs) without insisting of upon a receipt or without depositing the

amount in the bank account. There was no difficulty for her to deposit this huge rt amount in the account of the plaintiff when she was depositing the lesser amount by way of receipts. Therefore, the learned Courts below have rightly held that the version of the defendant regarding the payment of 5,00,000/- (Rupees Five Lakhs) to the plaintiff was not proved.

20. The defendant claimed that she had issued a blank cheque as a security for the amount of 70,000/-. She did not say anything about the receipt of 5,00,000/- (Rupees Five Lakhs) by two cheques. Therefore, in such circumstances, the learned Courts below had rightly relied upon the version of the plaintiff.

21. The findings regarding the issuance of cheque and consideration are pure findings of fact. It was laid down by the Hon'ble Supreme Court in Kapil Kumar v. Raj Kumar, (2022) 10 SCC 281, that the High Court cannot interfere with the concurrent .

findings of fact regarding the execution of the promissory note and the receipt. It was observed;

> "10. At the outset, it is required to be noted that as such there were concurrent findings of facts recorded by the learned trial court as well as the learned first appellate of court on the execution of pronote by the defendant in favour of the plaintiff. The said findings were on appreciation of the entire evidence on record. Therefore, unless the concurrent findings recorded by the courts rt below were found to be perverse, the same were not required to be interfered with by the High Court in the exercise of powers under Section 100CPC.
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> 11. Even the substantial question of law framed by the High Court cannot be said to be as such a question of law much less substantial question of law. From the impugned judgment and order passed by the High Court, it appears that as such no specific substantial question of law seems to have been framed by the High Court. However, it appears that what was considered by the High Court was whether the plaintiff has proved the execution of pronote and the receipt by leading cogent evidence.
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> 12. The aforesaid can be said to be a question of facts and cannot be said to be a question of law much less substantial question of law. Therefore, as such the High Court has committed a very serious error in upsetting the findings of facts recorded by the learned trial court confirmed by the learned first appellate court on the execution of the pronote by the defendant in favour of the plaintiff."

22. Therefore, it is not permissible to go into these findings in the absence of any perversity.

23. The defendant admitted the issuance of the cheque, her signatures and handwriting. This admission falsifies her .

version that a blank cheque was issued, and the learned Courts below had rightly rejected her version.

24. Plaintiff stated in his cross-examination that the cheque was not filled by the defendant but by some other person.

of This statement will not assist the defendant in view of her statement that the cheque bears her signature and handwriting. In rt any case, even if the cheque was not filled by the defendant, the same will not make any difference to her liability. It was laid down by Hon'ble Supreme Court in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197, that if a signed blank cheque is handed over by a person, the other has sufficient authority to fill the same. It was observed:-

> "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.
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> 34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
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> 35. It is not the case of the respondentaccused that he either .
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> signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondentaccused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of of undue influence or coercion. The second question is also answered in the negative.
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> 36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, rt 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.
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> 37. The fact that the appellant complainant might have been an Income Tax practitioner conversant with knowledge of the law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been

> obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed a blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them."

25. This position was reiterated in Oriental Bank of Commerce v. Prabodh Kumar Tewari, 2022 SCC OnLine SC 1089, wherein, it was held:-

> 12. The submission which has been urged on behalf of the appellant is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the .

liability of the drawer.

13. Section 139 of the NI Act states:

> 139. Presumption in favour of holder. - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole of or in part, of any debt or other liability.

14. In Bir Singh v. Mukesh Kumar, after discussing the settled line of precedent of this Court on this issue, a two-judge Bench held:

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> 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 the 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.
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> 34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

[...]

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.

(emphasis supplied)

15. The above view was recently reiterated by a three- judge Bench of this Court in KalamaniTex v. P. Balasubramanian.

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16. A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of rt a liability. The presumption arises under Section 139.

17. In AnssRajashekar v. Augustus Jeba Ananth, a two-

judge Bench of this Court, of which one of us (D.Y. Chandrachud J.) was a part, reiterated the decision of the three-judge Bench of this Court in Rangappa v. Sri Mohan on the presumption under Section 139 of the NI Act. The court held:

> 12. Section 139 of the Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression "unless the contrary is proved" indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a "reverse onus clause" the three-judge Bench of this Court in Rangappa held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities. This Court held thus:
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> "28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a .
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> settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or of liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in rt order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

(emphasis supplied)

18. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the

signing of the cheque cannot be rebutted merely by the report of a handwriting expert. Even if the details in the cheque have not been filled up by the drawer but by another person, this is not relevant to the defence whether the cheque was issued towards payment of a debt or in the discharge of a liability."

26. It was submitted that acquittal in the criminal case was not considered by the learned First Appellate Court and this vitiated the judgment. This submission cannot be accepted. The judgment of the criminal case is irrelevant under the proceedings before the Civil Court. Section 43 of the Indian Evidence Act provides that the judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42 are irrelevant unless the .

existence of such judgments, orders, or decrees, is a fact in issue or is relevant under some other provisions of the Act. Section 40 deals with a previous judgment constituting a bar to second suit or a trial. Section 41 deals with the judgment passed in the of exercise of probate, matrimonial, admiralty or insolvency jurisdictions, which confer upon a person any legal character and rt Section 42 deals with the judgment, if it relates to matters of a public nature relevant to the inquiry. In the present case, the judgment is not a bar to the present suit. It was not delivered in the exercise of probate, matrimonial admiralty or insolvency jurisdictions and does not deal with matters of a public nature;

therefore, the judgment in a criminal case will not fall within the purview of Sections 40 to 42 of the Indian Evidence Act and will be consequently inadmissible under Section 43 of the Indian Evidence Act.

27. It was laid down by the Hon'ble Supreme Court in Shanti Kumar Panda v. Shakuntala Devi, (2004) 1 SCC 438: 2004 SCC (Cri) 320: 2003 SCC OnLine SC 1201 that the findings recorded by the Criminal Court are not binding on the Civil Court. It was observed:

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> 15. It is well settled that a decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. (See Sarkar on Evidence, 15th Edn., p. 845.)

28. This position was reiterated in Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.), (2009) 5 SCC 528: 2009 SCC of OnLine SC 485, wherein it was observed:

> Axiomatically, if the judgment of a civil court is not binding rt on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court.
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> 26. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the Act. No other provision

> of the Evidence Act or for that matter any other statute has been brought to our notice.

29. It was laid down by the Hon'ble Supreme Court of India in Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729, that the judgment in a criminal case under Section 138 will be irrelevant in the Civil Suit. It was observed:-

> 13. What would be the effect of a judgment passed in the criminal proceedings in relation to the subjectmatter for which civil proceedings has also been initiated is the question. In a criminal proceeding, although upon discharge of the initial burden by the complainant, the burden of proof may shift on an accused, the court must apply the principles of "presumption of innocence as a human right". The statutory provisions containing the .

doctrine of reverse burden must therefore be construed strictly. Whereas a provision containing reverse burden on an accused would be construed strictly and subject to the strict proof of the foundational fact by the complainant, in a civil proceeding no such restriction can be imposed. xxxxx

20. Any person may as of right have access to the courts of of justice. Section 9 of the Code of Civil Procedure enables him to file a suit of a civil nature excepting those, the cognizance whereof is expressly or by necessary implication barred. Order 7 Rule 11(d) is one of such rt provisions which provides for the rejection of plaint, if it is barred by any law. Order 7 Rule 11(d) of the Code being one of the exceptions, thus, must be strictly construed.

21. This leads us to another question, namely, whether the civil suit was barred on the day on which it was filed. The answer to the said question indisputably must be rendered in the negative. If as on the date of institution of the suit, the plaint could not be rejected in terms of Order 7 Rule 11(d) of the Code of Civil Procedure, whether its continuation would attract the principles of abuse of processes of court only because the accused was acquitted in the criminal proceeding is the question.

22. Dismissal of a suit on the ground that it attracts the provisions of Section 12 of the Code, keeping in view of the content of provisions of Section 11 thereof may now be considered. The principle of res judicata as contained in Section 11 of the Code is not attracted in this case. Even the general principle of res judicata would also not be attracted. A suit cannot be held to be barred only because the principle of estoppel subject to requisite pleading and proof may be applied. The said principle may not be held to be applicable only at a later stage of the suit.

23. It brings us to the question as to whether the previous judgment of a criminal proceeding would be relevant in a suit. Section 40 of the Evidence Act reads as under:

> "40. Previous judgments relevant to bar a second suit or .
>
> trial.--The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the

> question is whether such court ought to take cognizance of such suit or to hold such trial."

This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata of or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth RamdayalJat v. Laxmi Prasad [(2009) 11 SCC 545 :

> rt (2009) 5 Scale 527] .) The judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of the imagination would be binding in a civil proceeding.

24. In M.S. Sheriff v. State of Madras [AIR 1954 SC 397] a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as a sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment.

25. If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in K.G. Premshanker v. Inspector of Police[(2002) 8 SCC 87: 2003 SCC (Cri) 223] wherein this Court inter alia held: (SCC p. 97, paras 30-31) "30. What emerges from the aforesaid discussion is .

-- (1) the previous final judgment can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, the principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions of mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, rt but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and the suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted of trespass. The

illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is--whether judgment, order or decree is relevant, if relevant--its effect. It may be relevant for a limited purpose, such as a motive or as a fact in an issue. This would depend upon the facts of each case."

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26. It is, however, significant to notice a decision of this Court in Karam Chand Ganga Prasad v. Union of India [(1970) 3 SCC 694], wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein, stating: (K.G. Premshanker case [(2002) 8 SCC 87: 2003 SCC (Cri) 223], SCC p. 98, para 33) of "33. Hence, the observation made by this Court in V.M. Shah case [V.M. Shah v. State of Maharashtra, (1995) 5 SCC 767: 1995 SCC (Cri) 1077] that the finding recorded by the criminal court stands superseded by rt the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in the Karam Chand case [(1970) 3 SCC 694] are in the context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case [AIR 1954 SC 397] as well as Sections 40 to 43 of the Evidence Act."

27. Sections 42 and 43 of the Evidence Act providing for the relevance of other decrees, orders and judgments read as under:

> "42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41.-- Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.
>
> 43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant.--Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant, under some other provision of this Act."

28. If the judgment of a civil court is not binding on a criminal court, it is incomprehensible that a judgment of a .

criminal court will be binding on a civil court. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant in some other provisions of the Act, no other provisions of the Evidence of Act or for that matter any other statute had been brought to our notice.

29. Another Constitution Bench of this Court had the occasion to consider the question in Iqbal Singh rt Marwah v. MeenakshiMarwah [(2005) 4 SCC 370: 2005 SCC (Cri) 1101]. Relying on M.S.

Sheriff [AIR 1954 SC 397] as also various other decisions, it was categorically held: (Iqbal Singh Marwah case [(2005) 4 SCC 370: 2005 SCC (Cri) 1101], SCC pp. 389-90, para 32) "32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case, the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given."

30. The question yet again came up for consideration in P. Swaroopa Rani v. M. Hari Narayana [(2008) 5 SCC 765 :

> (2008) 3 SCC (Cri) 79: AIR 2008 SC 1884] wherein it was categorically held: (SCC p. 769, para 11) "11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

31. In view of these authoritative pronouncements, we have no doubt in our mind that the principles of res judicata are not applicable to the facts and circumstances of this case.

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30. Therefore, the acquittal in the criminal case will not have any effect in the present proceedings and the defendant cannot take advantage of the same.

31. It was submitted that the loan was taken in the year of 2008 and the suit was filed in the year 2012 after the lapse of 4 years and the same was barred by limitation. This aspect was not rt considered by the learned Courts below. This submission is not acceptable. It is undisputed that the cheque bears the date 02.09.2009 and the suit was filed on 27.08.2012 within 3 years from the date of issuance of the cheque. It was laid down by Supreme Court in Jiwanlal Achariya v. Rameshwarlal Agarwalla, (1967) 1 SC 1118, that a post dated cheque will have the effect of acknowledgement of the debt and the limitation will start running from the date of the cheque. The Full Bench of Gujrat High Court also considered this question in Hindustan Apparel Industries v.

Fair Deal Corporation, New Delhi, AIR 2000 Guj 261 and held that the issuance of a post-dated cheque has the effect of revival of limitation and the limitation will start running from the date mentioned in the cheque. It was observed:

> .
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> 6. Now a statement written in the form of a cheque will amount to acknowledgement in writing. This proposition is well settled and finds acceptance even in Chintaman's case (AIR 1956 Bom 553) (supra). What the Division Bench has observed is that unless the cheque is honoured it could not be regarded as an acknowledgement in

writing as contemplated in the provision regarding part payment of in writing as appearing in Section 20 of the previous Limitation Act (now Section 19). According to the Bench, if the cheque is dishonoured the original debt which was conditionally satisfied would be deemed to be revived. In rt our considered opinion, the Division Bench of the Bombay High Court was considering the proposition of payment by cheques which ultimately were dishonoured as part of the payment in writing as contemplated by Section 20 of the Previous Limitation Act (now Section

19). While doing so the Bench has observed that such a cheque would not amount to acknowledgement of liability in writing when the cheque is dishonoured since the original debt would revive. With respect, in Chintaman's case (supra) the stages of issuance of cheque and realisation thereof clearly appear to have overlapped. Such a stage would be more relatable to the state of mind of the drawer of the cheque. When he issues the cheque, it is very much in his mind that he does so as part of his jural relationship with the person to whom he issues the cheque. There may be a different state of his mind at the stage when the cheque is presented for payment. This can well be explained by making a reference to a decision of the Hon'ble Supreme Court in the case of I.T. v. Ogale Glass Works Ltd. reported in AIR 1954 SC 429, where dealing with Section 82 of the Negotiable Instruments Act, 1881 it has been observed as under:--

"When it is said that a payment by the negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is .

dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand."

It has proceeded further to observe as under:--

'The position, therefore, is that in one view of the matter, there was, in the circumstances of this case, an implied agreement under which the cheques were of accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of rt the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques.' The aforesaid decision came to be distinguished in Jiwanlal v. RameshwarlalAgarwalla reported in AIR 1967 SC 1118. That was a case of issuance of post-dated cheque and the question that was required to be considered was with regard to what would be the relevant date of its payment. Section 20 of the previous Limitation Act came to be considered in that light. In the process, the Hon'ble Supreme Court has observed in the last part of para. 8 of the citation thus: ' It is not in dispute that the proviso to Section 20 is complied with in this case', for the cheque itself is an acknowledgement of the payment in the handwriting of the person giving the cheque. The

> distinguishing feature has been highlighted by saying that where the cheque is post dated, it is clear that no payment of a post dated cheque is possible before the date which it bears. Therefore, the proposition that the payment is on the date on which the cheque was delivered as appearing in Ogale's case (AIR 1954 SC 429) (supra) will hardly apply to a case of issuance of a post dated cheque since it is clear that no payment of a post-

dated cheque is possible before the date it bears.

7. What is important to be noticed from the above-noted decisions of the Hon'ble Supreme Court is that in the first .

place, a cheque is undoubtedly an acknowledgement of right or debt or liability and when the same is not issued as a post dated cheque, date of issuance of the cheque would assume importance, whether subsequently it is honoured or dishonoured. It is thus at the stage of issuance of the cheque that there surfaces an intention on the part of the debtor to acknowledge the of liability/right/debt owing to the person in whose favour the cheque is issued. In case the cheque is honoured it would undoubtedly amount to part payment in writing and the same would fall under Section 19 of the Act rt (Section 20 of the previous Act). While dealing with such part payment in the context of the date of such part payment, the facts of each case will assume importance in light of the aforesaid two decisions of the Hon'ble Supreme Court. In this view of the position of law reflecting upon the issuance of a cheque, it has to be stated that a cheque would prima facie amount to an admission of debt unless a contrary intention has been expressed by the person issuing the cheque. Such an admission of payment of debt is to be determined with reference to the point of time at which the purported admission was made, that is to say when the cheque was issued. Merely because subsequently such a cheque is dishonoured and the admission is retracted the admission or the acknowledgement can hardly be said to cease as an admission/acknowledgement of liability. To hold otherwise would be contrary to fair play between the parties, and justice and equity. With profound respect to the Bench in Chintaman's case (AIR 1956 Bom 553) (supra), we are unable to endorse the view expressed on the question in the said decision. We endorse the view expressed by the Patna High Court in Rajpatiprasad's case (AIR 1981 Patna 187) (supra), which is recent in point of time in so far as decisions referred to on behalf of the plaintiff are concerned. The view expressed by the learned single Judge in the referring judgment also merits acceptance.

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8. In the result, we answer the question as under:--

> "The payment by cheque which is dishonoured would amount to an acknowledgement of a debt and a liability. By necessary consequence, there will be saving of limitation as envisaged by Section 18 of the Act."

32. Therefore, the suit was within limitation and the plea of that the suit was barred by limitation is not acceptable.

33. It was submitted that the learned First Appellate Court rt has not discussed every aspect of the case and the judgment of the learned First Appellate Court is bad. This cannot be accepted. It was laid down in Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179: 2001 SCC OnLine SC 375, that the First Appellate Court need not write a detailed judgment when it is affirming the findings of the Court and a mere general agreement is sufficient.

It was observed at page 188:

> "The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence .
>
> or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, the decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi v. Bijendra Narain Choudhary [AIR 1967 SC 1124]). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a of device or camouflage adopted by the appellate court for shirking the duty cast on it." (Emphasis supplied)

34. In the present case, the learned First Appellate Court rt had affirmed the findings of the fact recorded by the learned Trial Court and it was sufficient for the learned First Appellate Court to express its agreement with the findings recorded by the learned Trial Court.

35. Therefore, it cannot be said that judgments and decrees are based upon the misinterpretation or misreading of the evidence. Learned First Appellate Court had considered the judgment passed by the Criminal Court. The findings were given on all the issues. The presumption was rightly considered and in view of the presumption, it is not necessary to prove the agreement advancing the loan; therefore, no substantial question of law arises in the present case.

Final order:

36. In view of the above, the present appeal fails and the .

same is dismissed.The record of the case be remitted back to the learned Courts below. Pending miscellaneous applications, if any, also stand disposed of.

(Rakesh Kainthla) of Judge 18th October,2023 (Ravinder) rt .

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