

**Dhirender Kumar vs.sanjiv Kumar**

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**SooperKanoon Citation :** [sooperkanoon.com/1202250](http://sooperkanoon.com/1202250)

**Court :** Delhi

**Decided On :** Dec-20-2016

**Appellant :** Dhirender Kumar

**Respondent :** Sanjiv Kumar

**Advocate for Pet/Ap. :** Shri. Rajeev Kumar

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: December 08, 2016 Judgment Delivered on: December 20, 2016 RSA1742016 DHIRENDER KUMAR Through: Mr.Kedar Yadav & Mr.Hemant Sharma, Advocates ..... Appellant + versus SANJIV KUMAR CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI Through: Mr.Rajeev Kumar, Advocate ..... Respondent JUDGMENT RSA1742016 1. This Regular Second Appeal though preferred against the concurrent finding of the facts by the Courts below, highlights the malpractices prevalent in the illegal business of money lending where the innocent, poor and needy persons especially in Government services at lower level are lured to sign blank documents at the time of taking loan at higher rate of interest to meet their urgent needs. The modus operendi in this money lending business has been prevalent for a long time but the problem arises when despite repaying the loan with higher rate of interest to such money lenders, the borrower continues suffering just for the reason that the blank cheques and RSA No.174/2016 Page 1 of 20 the stamp papers duly signed by him are not returned, rather misused by money lender. The instant case is a glaring example of

unethical and illegal practices being followed by the respondent/plaintiff taking advantage of the fact that blank cheques, promissory note and stamp paper duly signed were taken from the appellant while giving loan which stands repaid by him.

2. The appellant before this Court is a postman who had taken a loan from M/s Jai Kishan Finlease Pvt. Ltd. on 26th May, 2004 which was credited to his saving account on 28th May, 2004. The real issue is whether there was only one loan taken by the appellant from M/s.Jai Kishan Finlease Pvt. Ltd. which he has repaid but the blank documents duly signed by him were not returned despite repayment or there were two loans on the same day; one from M/s.Jai Kishan Finlease Pvt. Ltd. and another of 80,000/- from Sh.Sanjeev Kumar who is running M/s.Jai Kishan Finlease Pvt. Ltd. which was allegedly given by him on interest @ 2% per month against execution of documents Ex.PW to PW i.e. promissory note, receipt and loan agreement.

3. A Civil Suit No.178/2012 under Order XXXVII CPC was filed by the respondent/plaintiff on the strength of a loan agreement dated 26th April, 2004 and the cheque dated 26th November, 2006 in respect of a cash loan of `80,000/- given by the plaintiff to the appellant/defendant No.1 - Dhirender Kumar on interest @ 2% per month for a period of 30 months. Defendant No.2 Vijay Laxmi, colleague of defendant No.1 stood guarantor for the said loan. On failure of defendant No.1 to repay the said loan despite expiry of the agreed period, the plaintiff demanded the repayment with interest thereon. In order to discharge the said liability defendant No.1 issued cheque no.915370 dated 26th November, 2006 for `1,28,000 i.e. `80,000 RSA No.174/2016 Page 2 of 20 towards principle amount and `40,000 towards interest. Since the cheque on presentation got dishonoured on 13th January, 2007 for the reason that funds were insufficient, a notice dated 31st January, 2007 under Section 138 Negotiable Instrument Act was sent to the defendant No.1 which was returned with the remarks no such person resides. However, a reply dated 26th February, 2007 was received. The plaintiff pleaded that he has been cheated in a calculated manner by the defendant No.1 by withholding the outstanding amount of `1,28,000/-.

4. After considering the plea taken in the application seeking leave to defend, wherein it was specifically denied that any loan of `80,000 in cash was given by the plaintiff to defendant No.1 but admitted that a loan was taken from M/s.Jai Kishan Finlease Pvt. Ltd of which Sanjeev Kumar, plaintiff was the proprietor. Though the said loan has been repaid, the documents furnished at the time of taking that loan of `40,000 have been misused to file the suit under Order XXXVII CPC, learned Trial Court granted unconditional leave to defend.

5. Separate written statements were filed by both the defendants pleading that on seeing an advertisement in the newspaper about the loan, defendant No.1 approached one Smt.Seema at P-10, Lajpat Nagar, New Delhi-110007 who took him to M/s.Jai Kishan Finlease Pvt. Ltd of which Sanjeev Kumar was the proprietor. At that time of granting the loan of `40,000, to complete the formalities he was asked to submit blank stamp papers of `300, 18 blank cheques as well the processing charges. He furnished the signed blank papers with 18 blank cheques duly signed. Thereafter he was granted a loan of `40,000 and he continued repaying the same in EMI of `2,700 per month to Mr.Sethi and Mr.Manoj, representatives of M/s.Jai Kishan Finlease Pvt. RSA No.174/2016 Page 3 of 20 Ltd. He had paid approximately `53,000 against the said loan till sending the reply dated 26th February, 2007 but the blank cheques submitted by him were not returned rather the cheques given by him at the time of taking that loan have been misused. He denied having taken any loan of `80,000 @2% per month or issuance of any cheque dated 26th November, 2006 for `1,28,000, drawn on Post Office Vasant Kunj, Delhi.

6. Defendant No.2 the guarantor has since expired and the claim against her has already been withdrawn by the respondent/plaintiff. It may be noted that in the written statement she admitted having accompanied defendant No.1 at the time of taking loan of `40,000 and signed some blank documents as guarantor.

7. On the pleadings of the charges, following issues were framed: for?. OPP. (i) Whether plaintiff is entitled to the relief of recovery as prayed (ii) Whether any interest is payable?. If yes, at what rate?. OPP. (iii) Any other relief. 8. While the plaintiff examined himself as PW-1 and closed his evidence, the defendant No.1

examined himself as DW-1 to prove his defence.

9. Learned Trial Court after considering the testimony of the parties held that the plaintiff had proved through the documents i.e. promissory note and receipt Ex.PW1/1, loan agreement Ex.PW1/2, that he had given `80,000/- as loan to the defendant on interest @ 2% per month which he failed to repay. Even the bank statement of the defendant did not show that he had sufficient balance. The defendant also failed to prove that he had made payment of entire loan to M/s.Jai Kishan Finance Pvt. Ltd. and it is also not believable RSA No.174/2016 Page 4 of 20 that a borrower would repay the amount of loan by cash to agent of the lender without taking any receipt. The loan documents were also signed by the co-employee of defendant No.1. The plaintiff was held entitled to recover of amount of `80,000 with interest @ 2% per annum for the period of 30 months i.e. the loan agreement period and thereafter @ 10% per annum from 26th November, 2006 i.e. the date of the cheque till its realisation.

10. The First Appellate Court dismissed the appeal for the following reasons: (i) The appellant/defendant has not filed any such newspaper advertisement before the Courts below. (ii) The appellant/defendant failed to file any document to show that he has made any payment towards the loan allegedly advanced by M/s Jai Kishan Finance Private limited and agreed with the finding of the learned Trial Court that no payment could have been made to the agent of the lender without obtaining receipt. (iii) The appellant/defendant had not filed any document to show that he has taken any loan from M/s.Jai Kishan Finance Pvt. Ltd. (iv) The signature on the loan documents i.e. promissory note and receipt Ex.PW

and loan agreement Ex.PW

as well on the cheque dated 26th November, 2006 Ex.PW

for `1,28,000 i.e. `80,000 towards principal amount and `48,000 towards interest @ 2% per month for 30 months have been admitted by the appellant/defendant. (v) Once the person admits his signature the onus lies on him to prove the circumstances by leading cogent evidence, which the appellant failed to do. RSA No.174/2016 Page 5 of 20 (vi) The appellant should have taken some steps when he was served with the legal notice dated 6th February, 2007 Ex.PW

but his failure to do so shows that his defence is patently sham and without any

basis.

11. Learned counsel for the appellant Mr.Kedar Yadav has submitted that there was only one loan transaction dated 26th May, 2004 when a loan of `40,000 was given to the appellant. To comply with the procedural requirement of M/s. Jai Kishan Finlease Pvt. Ltd., he was made to sign on 18 blank cheques and his signatures were obtained on the stamp paper, promissory note and receipt etc. which were blank at that time.

12. Learned counsel for the appellant has drawn the attention of the Court to the cross-examination of PW-1 wherein he has admitted that a loan was given to the appellant by M/s.Jai Kishan Finlease Pvt. Ltd. and it has been repaid. The contention raised on behalf of the appellant is that this loan of `80,000 is claimed to be of the same date i.e. 26th May, 2004 but in cash and how is it possible that on the same day the company would also give a loan of `40,000 to the appellant by completing the formalities and taking 18 duly signed blank cheques from the appellant and on the same day the Proprietor/Director of the company Mr.Sanjeev would also give a cash loan of `80,000 and will get a cheque of `1,28,000 dated 26th November, 2006 after expiry of 30 months without there being any payment even of interest during the loan period of 30 months.

13. The findings of the Courts below have been assailed by the appellant on the ground that learned Trial Court failed to appreciate the fact that there was no record of paying `80,000 to the appellant in cash by the plaintiff in RSA No.174/2016 Page 6 of 20 individual capacity when he was Proprietor/Director of M/s. Jai Kishan Finlease Pvt. Ltd. and in money lending business.

14. Learned counsel for the respondent has submitted that there is a concurrent finding of fact by the courts below based on the documentary evidence i.e. promissory note and receipt Ex.PW

& loan agreement Ex.PW

that a loan of `80,000 was granted by the respondent/plaintiff to the appellant/defendant and at that time the above documents were executed which was duly signed by him and his guarantor. The signature of the appellant on the cheque for a sum of `1,28,000 being admitted and the plaintiff having proved that

this cheque was issued by the appellant towards discharge of his liability against the loan of `80,000 and interest thereon the impugned judgments do not raise any substantial question of law, hence the same cannot be interfered by this Court in exercise of jurisdiction under Section 100 CPC.

15. After hearing the learned counsel for the parties following substantial question of law has been formulated: Whether the Courts below have committed complete illegality and perversity by overlooking the specific defence evidence of the appellant/defendant that only one loan for `40,000/- was taken from Jai Kishan Finance Pvt.Ltd. and not of `80,000/- from its Director Sanjiv Kumar in his individual capacity and that the blank documents taken from him at the time of taking loan from financial company have been misused by the respondent/plaintiff?. 16. I shall first deal with the contention relating to scope of jurisdiction of High Court under Section 100 of Code of Civil Procedure to interfere with the concurrent finding of facts by the Courts below. RSA No.174/2016 Page 7 of 20 17. Though rightly contended by learned counsel for the respondent, that scope for interference with the concurrent finding of facta while exercising jurisdiction under Section 100 CPC is very limited and re-appreciation of evidence is not permissible, it is also well settled that where the Trial Court and/or the First Appellate Court misdirected themselves in appreciating the question of law or placed the onus on the wrong party, there is a scope for interference under Section 100 CPC after formulating substantial question of law. In the instant case substantial question of law has already been formulated. It is well settled that an inference of fact from a document is a question of fact. But the legal effect of the terms of the documents is a question of law. In a case where there is misconstruction of the document, or wrong application of principle of law while interpreting a document there is a scope for interference under Section 100 CPC.

18. Reverting to the facts of the present case, PW-1 - the plaintiff after examination-in-chief by way of affidavit and reiterating the facts pleaded in the plaint, has admitted certain facts during his cross-examination. The admissions extracted during cross-examination are going to the root of the matter, hence extracted hereunder: Statement of Sh.Sanjeev Kumar (PW1) S/o Sh.P.L.Manocha R/o 38, Jeevan Bima Apartment, East Arjun Nagar, Delhi- 110032 On SA I am

tendering my evidence by way of affidavit which is Ex.Ex.PW1/A and which bears my signature at point A & B. I also reply upon the documents namely Ex.PW to Ex.PW1/11. XXXXXX by Sh.Tara Singh Counsel for defendant No.1 RSA No.174/2016 Page 8 of 20 I know the defendant No.1 since the year 2001-2002. I did not place any advertisement in any newspaper for grant of loan. The company M/s Jai Kishan Finlease Pvt. Ltd. is run by the Directors of the company. The above said company is registered one. It is wrong to suggest that the defendant has taken loan of sum of ` 40,000/- from the M/s.Jai Kishan Finlease Pvt. Ltd. It is further wrong to suggest that defendant has given 18 cheque to M/s.Jai Kishan Finlease Pvt. Ltd. which are namely cheque No.91555367 to cheque No.91555374. At this stage, the counsel for defendant wants to confront the PW-1 with photocopy of certain Cheques. Counsel for plaintiff objects to the same as original has not been produced in the Court. Counsel for defendant has sought adjournment to produce the original cheques in the Court. Further cross examination is deferred at request of counsel for defendant. RO & AC Sd/- C.J.01/East/KKD/20.12.10 Statement of (PW-1) Sh.Sanjeev Kumar (recalled for further cross-examination). On S.A. XXXXXX by Sh.Tara Singh, counsel for defendant No.1 The cheques Ex.PW1/D-1 and Ex.PW1/D-2 were given to the company M/s.Jai Kishan Finance Pvt. Ltd. in discharge of loan liability taken by the company. The defendant borrowed a loan of `60,000/- from the aforesaid company. I do not remember whether the loan amount was given in cash or by way of cheque. The loan of `60,000/- was repaid by the defendant. However, some amount is still due. I did not file any complaint regarding non-payment of the same. Pro-note, loan agreement and certain other documents were executed at the time of grant of loan by the company to the defendant. I can produce the above mentioned documents in the Court on the next date of hearing. The finance company also had given loan to other persons in cash. It is wrong to suggest that the company had RSA No.174/2016 Page 9 of 20 given only `40,000/- as loan vide cheque no.812693108 and no other amount was given by the company to the defendant. It is wrong to suggest that defendant had repaid the loan amount alongwith interest to the tune of `54,000/-. It is wrong to suggest that the company was handed over 18 cheques in lieu of repayment of alleged loan amount of `40,000/-. It is wrong to suggest that the blank cheques were handed over and

each of the cheques was supposed to be filed by the plaintiffs in the sum or `2700/- each. It is wrong to suggest that the abovesaid cheques got bounced as the company filed in the amount of `3,0000/- in some of the above mentioned cheques. It is wrong to suggest that I have not given a loan of `80,000/- to the defendant. It is wrong to suggest that I have misused the cheques and documents given to the company. It is wrong to suggest that I have implicated the defendant falsely in this case and a criminal complaint is pending against me. I hereby close my PE. RO & AC Sd/- C.J.01/East/KKD/07.02.2011 DEFENCE EVIDENCE DW1: Dhirender Kumar S/o Shri Gan Pati R/o Flat No.67, Pocket-6, Site No.3, Nasir pur, Dwarka, New Delhi-110045. On S.A. I am the defendant in the present case. I tender my affidavit Ex.DW1/A bearing my signatures at pt.A and B respectively. I am not relying upon any document. XXXX by Shri Rajeev Kumar counsel for the plaintiff. I read the affidavit Ex.DW1/A before signing the same. I was working as a post man at Post Kunj Post office. I do not remember as what amount as salary was being received by me at the time of taking of loan from the plaintiff. I received loan of `40,000/- from M/s.Jai Kishan Finlease for my personal need. I borrowed the said loan for payment of my school going RSA No.174/2016 Page 10 of 20 children. I have no documentary proof to show that I approached Smt.Seema at P-10, Lajpat Nagar IInd, Near Batta Shop, Left Ist turn, near MTNL Exchange. It is wrong to suggest that I am deposing falsely regarding the aforesaid facts. I am undergraduate. I gave three stamp papers of `300/- (i.e. 100/- ` each) to the company. But I do not remember the name of person to whom these stamp papers were given. I also do not know the name of the person to whom the cheques vide sl.no.915357 to 915324 were given. (vol) I have given these cheques to the company. Ques. I put it to you that in your WS you have stated that `4800/- was paid in cash to the plaintiff and in reply to the notice dated 26.2.2007, you have stated the same. Whereas, in your affidavit it is mentioned that `4,000/- in cash was given to the plaintiff?. Which of the above said statement is correct?. Ans. `4,000/- in cash has been given at one time and `300/- was spent by me towards purchase of stamp paper and `500/- were towards miscellaneous expenses for completing the formalities of loan and therefore, the total comes to `4800/-. At this stage witness is confronted with lines in para no.1 on merits wherein it is stated that the plaintiff took blank stamp papers of `300/- ..... and ` 4800/- cash etc.,

for completing the formalities of loan of `40,000/-..... It is wrong to suggest that neither I had given `4,000/- nor any blank stamp paper, blank cheques and blank documents to the plaintiff. The plaintiff had taken `500/- from me towards miscellaneous expenses and I cannot tell the purpose for which it was exactly spent. Blank cheques were handed over to the plaintiff for payment which was intentionally filled up in the sum of `3,000/- by the plaintiff instead of `2700/-. Apart from the cheques placed on record by the plaintiff, I have not other documentary proof to show that payment of `2700/- was used to be made by me to the plaintiff. I have not placed on record any documentary proof to show that every month a payment in the sum of `2700/- was made to Mr.Sethi and Mr.Manoj who were representatives of plaintiff. I have not placed on record any that Mr.Sethi and Mr.Manoj were documentary proof RSA No.174/2016 Page 11 of 20 representatives of M/s.Jai Kishan Finlease Pvt. Ltd.(Vol) There was never any need for verifying the same as Mr.Sethi was the person who did my address verification on behalf of M/s.Jai Kishan Finlease Pvt. Ltd. It is wrong to suggest that Mr.Sethi and Mr.Manoj Kumar are/were neither the employees of the plaintiff nor the employees of M/s.Jai Kishan Finlease Pvt. Ltd. The two cheques which were deliberately got bounded by M/s.Jai Kishan Finlease Pvt. Ltd. has no connection with the plaintiff in his individual capacity but he has connection with the same in his official capacity as Director of M/s.Jai Kishan Finlease Pvt. Ltd. I cannot tell if the alleged fact as mentioned in para no.6, 9 and 10 of my affidavit Ex.DW-1/A has been mentioned in my WS or not. I can tell the same only after inspecting the record. It is wrong to suggest that the fact as alleged in para no.6, 9 and 10 of my affidavit are an after thought. The cheques got bounced as instead of `2700/- `3,000/- was filled up in the cheque by M/s.Jai Kishan Finlease Pvt. Ltd. and at the relevant time, there used to be only such sum in my account for the payment of the cheque in sum of `2700/- (vol) after the cheques were voluntarily got bounced by M/s.Jai Kishan Finlease Pvt. Ltd., the company used to send its representatives to collect `2700/- in cash from me. It is wrong to suggest that I had taken loan in the sum of `80,000/- from the plaintiff @ 2% per month repayable in the period of 30 months. (vol) I do not even know the plaintiff personally. It is wrong to suggest that Shri Sanjeev Kumar has given the loan of `80,000/- in cash to me. (Further cross is deferred) RO & AC Sd/- C.J.01/East/KKD/06.06.2011

Statement of DW-1 Dhirender Kumar (last examination was done on 06/06/2011). On SA XXXXXXXXXX by Rajiv Kumar counsel for the plaintiff. Document Ex.PW bears my signature at point A and the signature of Smt.S Vijay Laxmi at point B. The document RSA No.174/2016 Page 12 of 20 Ex.PW also bears my signature at point A. It is wrong to suggest that I had taken a loan of `80,000/- and had executed a loan agreement in favour of the plaintiff. I did not issue a promissory note to the plaintiff. Vol. The same was issued by Jai Kishan Finance in the name of the plaintiff. It is wrong to suggest that I issued a cheque of `1,28,000/- in favour of the plaintiff after the expiry of the loan period and the same was dishonoured. I had received notice dated 31/ from the plaintiff. RO & AC Sd/- CJ-01/East/KKD/07/

19. The findings of the Courts below are based on the documents annexed with the plaint i.e. Promissory Note & Receipt Ex.PW1/1, Loan Agreement dated 26th May, 2004 Ex.PW

as well the cheque No.915370 dated 26th November, 2006 for 1,28,000 Ex.PW mainly for the reason that signatures on all these documents have been admitted by the appellant/defendant. What the Courts below have failed to consider is the defence evidence that only one loan was taken on 26th May, 2004 from the finance company. All these documents were signed by him and given blank at the time of taking loan from M/s.Jai Kishan Finlease Pvt. Ltd. which loan was credited in his account vide cheque No.812693108 and except that no other amount in cash was given to him by the respondent/plaintiff in personal capacity. The defence of the appellant has been totally ignored by the learned Trial Court and the First Appellate Court without examining the credibility of the defence statement.

20. In the backdrop that for the first time only in his cross examination PW-1 - the plaintiff admitted the factum of loan being given to the defendant on 26th May, 2004 by M/s.Jai Kishan Finlease Pvt. Ltd. which has RSA No.174/2016 Page 13 of 20 been repaid. The respondent/plaintiff could have demolished the defence only by producing his own statement of accounts, his income tax return showing giving of loan of 80,000/- in his ITR on monthly interest of 2% for a period of 30 months and at the same time producing the account books of M/s.Jai Kishan Finlease Pvt. Ltd. and the set of identical documents like promissory note, receipt and loan

agreement separately executed by the appellant/defendant to comply with the procedural requirements of the loan taken from the company. The respondent/plaintiff individually is not having money lending licence. When he was running a finance company, the requirement of loan of the appellant/defendant could have been met by getting all the documents executed in favour of the finance company. It was not a friendly loan as the appellant had contacted the financier and loan was granted only after he complied with the procedural requirement as per their dictate by handing over duly signed 18 cheques as well signing the blank stamp papers, promissory note and receipt. The loan of 40,000/- taken from the finance company has been credited to his account but 80,000/- which is double the amount is claimed to be given in cash.

21. So far as the loan taken on 26th May, 2004 from the finance company M/s.Jai Kishan Finlease Pvt. Ltd. is concerned, the appellant had proved the same not only from entries in his passbook but also from the copy of his cheque book which contained the cheque from Sr.No.915351 in respect of Post Office savings account No.857363. While handing over 18 blank cheques duly signed, the counter foil of the cheque book Ex.DW

is filled as under: Date Cheque No.Pay To Rupees On A/c of RSA No.174/2016 Page 14 of 20 915351 to 915374 Jai Krishan Fin Pvt. Ltd. 2700 x 18 = Loan 22. The entries in the passbook dated 28th May, 2004 shows that an amount of 40,000/- was credited in his account. This is the amount which was credited in his account by M/s.Jai Kishan Finlease Pvt. Ltd. vide cheque No.812693 towards the loan granted to the appellant/defendant. Unfortunately the respondent/plaintiff preferred to deny that this cheque was issued by M/s.Jai Kishan Finlease Pvt. Ltd. However, he could not deny that cheque No.915359 dated 10th October, 2005 and 915362 dated 10th December, 2005 Ex.PW1/D1 and D2 in favour of M/s. Jai Kishan Finlease Pvt. Ltd. bearing the signature of the appellant were dishonoured. Both these cheques are of 3,000/- each. The factum of these cheques being dishonoured is not disputed by the parties. The plea of the appellant/defendant is that the cheques should have been of the amount of 2,700/- as the loan taken from the finance company was payable in EMI of 2,700/- but these two being of 3,000/- each were dishonoured for insufficient funds. Cheque No.915370 is part of the above series and one of the 18 cheques given to M/s. Jai Kishan Finlease Pvt.

Ltd.

23. The respondent/plaintiff claims that he knew the appellant since 2001- 2002. The appellant is a Postman only and any individual or finance company while giving a loan, assesses the repaying capacity of the borrower. The salary of a postman in the year 2004 with liability to repay the loan taken from M/s.Jai Kishan Finlease Pvt. Ltd. would not have left with any repaying capacity so as to be eligible for further 80,000/- as loan (in cash) on the same day from the person running the finance company. RSA No.174/2016 Page 15 of 20

24. The respondent/plaintiff PW-1 has tried to explain grant of loan of 80,000/- in personal capacity stating that the company was not having the funds. If the finance company was not having the funds then how as per PW-1 60,000 was given as loan to the appellant and at the same time 80,000/- by him in personal capacity which could have been lent through the finance company being run by him. It being not a friendly loan, the appellant/defendant who is a postman and who had already taken one loan on that day i.e. 26th May, 2004 was required to have repaying capacity for taking another loan of 80,000/- in cash. In respect of the loan taken from the finance company on 26th May, 2004, the cheques PW1/D1 & D2 presented towards EMI for the month of October, 2005 and December, 2005 which were for the sum of 3,000 each were dishonoured on account of insufficient balance. Despite that no criminal complaint under Section 138 NI Act or civil suit was filed in respect of the loan taken from finance company. This is sufficient to prove that so far as loan taken from the company was concerned, it was admittedly repaid by the appellant/defendant by making cash payment to the agents of the company namely Mr.Sethi & Mr.Manoj. The admission by PW-1 Sanjeev Kumar that the loan of 60,000 was repaid by the defendant and again saying that some amount was still due but as a matter of fact in respect of the loan taken by the appellant/defendant from the finance company, there was neither any litigation not even a demand notice was sent for the alleged outstanding amount, if any, to the appellant/defendant by M/s.Jai Kishan Finlease Pvt. Ltd. No dispute was raised at any stage by M/s.Jai Kishan Finlease Pvt. Ltd. in respect of the loan granted to the appellant/defendant on 26th May, 2004 despite the fact that the two cheques Ex.PW1/D1 & D2 issued in favour of the finance company RSA No.174/2016 Page 16 of 20 towards repayment of loan were dishonoured. There

is an admission by PW-1 Sanjeev Kumar that the said loan has been repaid. In that circumstance learned Trial Court could not have made observation against the appellant/defendant doubling the payment made by him in cash to the agents of the company but not having the receipts.

25. The question required to be examined by the Courts below was whether on admission of PW-1 - the plaintiff about one loan being given by M/s.Jai Kishan Finlease Pvt. Ltd. and the same having been repaid, the loan documents obtained from the appellant by the finance company were returned to the appellant or the same were misused in civil suit filed under Order XXXVII CPC. That would have clarified the entire situation. During cross-examination of PW-1 on 7th February, 2011, he admitted that promissory note, loan agreement and other documents were executed by the appellant at the time of taking loan from the finance company and he (PW-1) can produce the above mentioned documents on the next date of hearing. But surprisingly, on the same day he closed the plaintiffs evidence. At any subsequent stage or even during cross-examination of the appellant/defendant as DW-1 the documents executed by him at the time of taking loan from the finance company, were neither produced nor confronted to DW-1 to prove that two separate sets of documents were executed in respect of two separate loans dated 26th May, 2004 (i) from the finance company i.e. M/s.Jai Kishan Finlease Pvt. Ltd., and (ii) from the director of the finance company i.e. Sh.Sanjeev Kumar.

26. It may also be necessary to mention here that the loan was claimed to be for 30 months but the interest was payable monthly i.e. 2% per month on the amount of 80,000. No post-dated cheques are stated to have been taken RSA No.174/2016 Page 17 of 20 towards EMI. It is nowhere the case of the respondent/plaintiff that after giving a cash loan of 80,000 against promissory note & receipt Ex.PW

and loan agreement Ex.PW

any payment was made by the appellant towards repayment of this loan. When the cheques Ex.PW-D1 & D2 in favour of the finance company were dishonoured in October and December, 2005, with no repayment forthcoming towards the alleged loan of 80,000 for more than two-and-a-half years, respondent/plaintiff who

is running a finance company would not have waited for 30 months to expire, knowing fully the financial repaying capacity of the appellant/defendant.

27. It is nowhere the case of the respondent/plaintiff that before obtaining cheque Ex.PW

for 1,28,000 on 26th November, 2006 any demand notice was sent to him or he was called to the office of the finance company or otherwise persuaded to issue this cheque Ex.PW

in discharge of the liability towards the said loan of 80,000 given in cash in personal capacity by the respondent/plaintiff. The fact that the cheque No.915370 forms part of series of those 18 cheques of which endorsement is made on the counter foil of the chequebook referred to above as Ex.DW

lends credence to the defence plea that one out of those 18 cheques given by him to the finance company has been misused by the respondent/plaintiff by concocting a story of giving another loan of 80,000/- in cash in personal capacity. In fact the entire plaint is silent about one loan also being taken on the same day i.e. 26th May, 2004 from the finance company. Even in replication in reply to the defence plea that only one loan was taken from the finance company and the documents furnished therein have been misused to file the suit under Order XXXVII CPC, were merely denied. However, the falsity of this plea surfaced during cross-examination of PW-1 when he admitted the factum of RSA No.174/2016 Page 18 of 20 one loan being taken on 26th May, 2004 itself from the finance company being run by him. Failure to produce the loan documents pertaining to that loan from the finance company corroborates the defence plea that the loan documents have been misused in the civil suit filed under Order XXXVII CPC.

28. How the financier has misused the documents can be seen from the loan agreement dated 26th May, 2004 Ex.PW1/2. The manner in which the matter has been typed on the stamp paper, though there is enough space for the signature immediately there, the space for signature of borrower and guarantor have been typed at the edge of the paper shows that the blank signed stamp paper has been misused. The fact that exactly on expiry of 30 months from 26th May, 2004 a cheque for 1,28,000/- (80,000 + 48,000) was filled on 26th November, 2006 and presented in January, 2007 establishes that the cheque taken earlier has been

misused. The fact that no complaint under Section 138 NI Act was filed even after serving of notice leads to the inference that the said cheque was not issued on 26th November, 2006 to discharge liability of a legally enforceable debt.

29. I am satisfied from the record that the documents filed in the summary suit under Order XXXVII CPC were obtained from the appellant/defendant while sanctioning him loan taken from the finance company but misused to further exploit him to make him pay much more than what could have been legally recovered from him. The fact that the appellant/defendant within his limited resources had even filed a criminal complaint though at a late stage, shows that he is running from pillar to post to seek justice for himself.

30. The courts below have erred in decreeing the suit just on the basis that the documents were admittedly signed by the appellant without examining RSA No.174/2016 Page 19 of 20 that these loan documents pertained to the loan taken from the finance company. Otherwise also for a loan of 40,000/- if so many procedural formalities were required to be complied with and the amount was transferred in the bank account, the loan of 80,000 given to the appellant/defendant could not have been given in cash by the respondent/plaintiff - the money lender without ensuring repaying capacity of the borrower and securing his money.

31. In view of the above discussion, the substantial question of law is answered in favour of the appellant/defendant. The impugned judgments of the courts below are set aside.

32. This case highlights the plight of the poor, innocent persons and how they are exploited not only by charging very high rate of interest i.e. 24% per annum but also despite repayment of the loan amount, the blank signed documents are not returned rather misused. Such needy persons who fall in the trap of such type of financiers on assurance of easy/prompt loans are further exploited by involving them in prolonged litigation. In this case almost for a decade the appellant/defendant, who is a Postman had been fighting this litigation up to High Court by filing this second appeal and incurring huge cost of litigation. This Regular Second Appeal is allowed and the suit of the respondent/plaintiff is

dismissed with cost throughout. CM No.24625/2016 (Stay) Dismissed as infructuous. DECEMBER20 2016 hkaur/st PRATIBHA RANI, J.

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