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

% ***Date of decision: 03rd September, 2026***

CNR No. DLHC010228422023

+ **RSA 108/2023, CM APPL. 30960/2023**

1. **M/S STEPS FOR WEALTH TRADERS**
Having its office at:
G-14/F-2, Dilshad Colony,
Delhi-110095.
Through its A.R./Partner.

2. **DEVESH KUMAR DUBEY**
S/o Shri Chander Shekhar Dubey
R/o A-56, Pariyavaran Complex,
Saket, New Delhi-110030.

.....Appellants

Through: Mr. Raj Kumar and Mohd. Riyaz, Advocates

versus

MADHVI MAHESHWARI
W/o Shri Sanjeev Maheshwari
R/o H.No.31, Govind Khand,
Vishwakarma Nagar, Delhi-110095.

.....Respondent

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

NEENA BANSAL KRISHNA, J.

1. The present Regular Second Appeal under Section 100 read with Order XLII Rule 1 of the Code of Civil Procedure, 1908 *(hereinafter referred to as the "CPC")* has been preferred by the Defendants/Appellants

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against the Judgment dated 14.02.2023, *vide* which the learned Additional District Judge in RCA DJ No.145/2019 upheld the Order and Decree dated 24.10.2019 of the learned Civil Judge, whereby the *Application for Leave to Defend filed by the Defendants/Appellants under Order XXXVII CPC was rejected*, and the Suit of the Plaintiff/Respondent was decreed for a sum of Rs.2,00,000/- along with *pendente lite* interest @ 9% per annum, while the prayer for future interest was declined.

2. The Plaintiff/Respondent, Madhvi Maheshwari, had instituted *CS No.712/2018 under Order XXXVII CPC, for recovery of Rs.2,00,000/- along with pendente lite and future interest @ 24% per annum.*

3. The ***facts in brief,*** as stated in the Plaint, are that the Plaintiff and the Defendants were known to each other, through business relations. A Memorandum of Understanding *(hereinafter referred to as the "MoU")* dated 20.01.2016 was executed between the Plaintiff, Madhvi Maheshwari, and the Defendants, M/s Steps for Wealth Traders *in respect of a sum of Rs.2,00,000/- advanced by the Plaintiff, which was to be returned within a period of 20 months.*

4. The Plaintiff claimed that the Defendants failed to adhere to the terms and conditions of the MoU and did not repay the amount, as agreed. Consequently, a Legal Notice dated 30.05.2018 was issued demanding repayment of Rs.2,00,000/-, and on failure of the Defendants to make payment, *the Suit under Order XXXVII CPC for recovery of Rs.2,00,000/- along with pendente lite and future interest @ 24% per annum, was instituted.*

5. On being served with the summons for judgment, *the Defendants/Appellants filed an Application seeking Leave to Defend along*

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with an Affidavit in support thereof. The **defence set up** was that the transaction was not between the Plaintiff and the Defendants, but was in fact, between the Defendants and the husband of the Plaintiff, Sanjeev Maheshwari. The Defendants further claimed that *the Plaintiff was not known to them and that they had never directly dealt with her*.

6. It was further asserted that the cheque in question, had been issued only by way of security. It was agreed between the parties that upon repayment of the amount to the husband of the Plaintiff, the security cheque was to be returned to the Defendants.

7. It was further claimed that the sum of Rs.2,00,000/-, had been repaid in cash to the husband of the Plaintiff in terms of the understanding between the parties. However, despite such repayment, the cheque in question was not returned and it was alleged that the Plaintiff, in collusion with her husband, had deliberately misused the cheque, to institute the present Suit for recovery.

8. On the basis of the aforesaid pleas, it was asserted that several triable issues arose which required evidence to be led by the parties and, therefore, Leave to Defend the Suit was sought, by the Defendants.

9. The **learned Civil Judge, *vide* Order dated 24.10.2019**, observed that the Defendants did not dispute the signatures on Cheque No.032435 dated 20.10.2017. Their defence was that the cheque had been issued *only by way of security* and that the *transaction was with the husband of the Plaintiff and not with the Plaintiff*. This plea was not accepted in view of the MoU executed between the Plaintiff and Defendant No.1, which evidenced the transaction between them. Therefore, the claim that the Defendants had no concern with the Plaintiff, was not accepted.

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10. Insofar as the plea of repayment of Rs.2,00,000/- was concerned, the learned Civil Judge observed that no receipt evidencing such payment had been placed on record. Further, no statement of account had been produced, to demonstrate repayment of the loan amount. It was further noted that the Application seeking Leave to Defend, did not contain any particulars with regard to the alleged payment or any other material, which could *prima facie* raise a doubt requiring trial.

11. Consequently, the learned Civil Judge held that no triable issue had been raised by the Defendants warranting grant of Leave to Defend. The Application under Order XXXVII Rule 3(5) CPC was, accordingly, dismissed and, in terms of Order XXXVII Rule 3(6)(a) CPC, the Suit was decreed for a sum of Rs.2,00,000/- along with *pendente lite* interest @ 9% per annum, while the prayer for future interest was declined.

12. *Aggrieved by the Order and Decree dated 24.10.2019,* ***the Defendants preferred RCA DJ No.145/2019 before the learned Additional District Judge.***

13. The *principal grounds of challenge* were that the cheque in question had never been presented for encashment and that there was no transaction between the Plaintiff and the Defendants. The transaction was, in fact, with the husband of the Plaintiff and that the amount of Rs.2,00,000/- had already been repaid to the husband of the Plaintiff.

14. It was further contended that there was a discrepancy with regard to the date of the MoU and that the cheque in question, though bearing the signatures of Defendant No.2, had not been filled in by him. Reliance was placed on *Wander Ltd. vs. Anr. c. Antox India Private Limited*, 1990 Supp SCC 727 and *IDBI Trusteeship Services Ltd. v. Hubtown Ltd.* (2017) 1 SCC

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568 in support thereof.

15. Furthermore, the Defendants were aggrieved that their specific plea that the transaction had been entered into with the husband of the Plaintiff, and not with the Plaintiff herself, had not been duly considered by the learned Civil Judge. Certain receipts were also sought to be relied upon by the Appellants in the Appeal, which had not been produced before the learned Civil Judge.

16. The **learned Additional District Judge, *vide* Judgment dated 14.02.2023,** rejected the contention that the Suit was not maintainable merely because the cheque in question had not been presented for encashment, as the Suit was founded upon the MoU dated 20.01.2016, constituting a written contract within the ambit of Order XXXVII CPC. The plea that the transaction was with the husband of the Plaintiff and not with the Plaintiff herself, was also not accepted in view of the MoU executed between the Plaintiff and Defendant No.1.

17. Insofar as the plea of repayment of Rs.2,00,000/- was concerned, the learned Additional District Judge observed that no receipt evidencing such repayment had been produced, before the learned Civil Judge. Though certain receipts were sought to be relied upon in the Appeal, the same were not considered as they had neither been referred to nor produced before the learned Trial Court and no satisfactory explanation had been furnished for their non-production. It was further observed that no statement of account had been produced to reflect the alleged repayment. The objection regarding the discrepancy in the date of the MoU, was also rejected upon examination of the Plaint and the MoU.

18. The learned **Additional District Judge, accordingly, concurred**

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with the finding of the learned Civil Judge that no triable issue had been raised by the Defendants in the Application seeking Leave to Defend and, consequently, **dismissed the Appeal** while upholding the Order and Decree dated 24.10.2019.

19. *Aggrieved thereby, the Defendants/Appellants have preferred the **present Regular Second Appeal.***

20. The ***principal ground of challenge*** is that the averments contained in the Plaint itself disclose that the Suit was barred under *Section 3 of the Punjab Registration of Money-Lenders Act, 1938,* as applicable to Delhi. It is contended that the Plaintiff had advanced the amount with a view to earn profit and, therefore, fell within the definition of a *"money-lender"* under Section 2(9) of the said Act.

21. It is further contended that the Plaintiff was neither registered as a money-lender nor possessed any valid licence under the aforesaid Act and, consequently, the Suit for recovery was not maintainable since it is barred under the Money Lenders Act, 1938.

22. It is also asserted that there was *no admission on the part of the Defendant/Appellants of having availed a loan of Rs.2,00,000/- from the Plaintiff/Respondent.* On the contrary, the stand taken in the Application seeking Leave to Defend was that the Defendants had never dealt with the Plaintiff and that the transaction was with her husband. The amount received from the husband of the Plaintiff, was stated to have already been repaid, either directly to him or to persons acting on his behalf.

23. It is, therefore, contended that in the absence of any admission regarding the loan transaction with the Plaintiff, both the Courts below erred in concluding that the Appellants had executed the loan transaction and

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received Rs.2,00,000/- from the Plaintiff.

24. It is further contended that although the Plaintiff relied upon a cheque stated to have been issued by the Defendants, *it was never presented for encashment and no explanation for its non-presentation was forthcoming.* This, according to the Appellants, rendered the case set up in the Plaint inherently contradictory and *gave rise to triable issues,* which could not have been rejected at the stage of consideration of the Application seeking Leave to Defend.

25. The impugned Judgments are, therefore, sought to be set aside.

26. The Notice was directed to be issued to the Respondent on 01.06.2023, but no steps were taken by the Appellant and no service was effected upon the Plaintiff/Respondent.

Submissions heard and record perused.

27. The core question which arises for consideration in the present Regular Second Appeal is whether any substantial question of law arises from the concurrent findings returned by the two Courts below.

28. The ***first ground*** agitated by the Appellants is that *there was no privity of contract with the Plaintiff,* Madhvi Maheshwari, as the Defendants had never met or dealt with her and the entire transaction had, in fact, been entered into with her husband, Sanjeev Maheshwari.

29. The first significant document relied upon by the Plaintiff, is the MoU dated 20.01.2016 executed between the Plaintiff, Madhvi Maheshwari, and Defendant No.1, M/s Steps for Wealth Traders. The MoU bears the signatures of Defendant No.2, Devesh Kumar Dubey, on behalf of Defendant No.1. In the Application seeking Leave to Defend, neither the execution of the MoU nor the signatures appearing thereon, were denied.

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The plea that the Defendants had no dealings with the Plaintiff or that there was no privity of contract with her is, therefore, belied by the written MoU itself.

30. The ***second ground*** is that while the Plaintiff asserted that a loan of Rs.2,00,000/- had been advanced to Defendant No.1, as an investment by the husband of the Plaintiff, with an understanding that the amount would subsequently be returned to him.

31. However, subsequently in the First Appeal, the Defendants described the amount as a loan taken from the husband of the Plaintiff. Whether the amount was described as an *"investment"* made through the husband of the Plaintiff or as a *"loan"* taken from him, *the fact remains that the receiving of Rs.2,00,000/- by Defendant No.1 was not disputed.*

32. Even if it is accepted that the sum of Rs.2,00,000/- had been physically handed over to Defendant No.1 by the husband of the Plaintiff, the same would not negate the contractual relationship between the Plaintiff and Defendant No.1, evidenced by the MoU. Under Indian contract law, consideration may move from the promisee or from any other person and *it is the privity of contract, and not privity of consideration, which is material*. *The MoU unequivocally reflects the contractual relationship between the Plaintiff and Defendant No.1*.

33. The **third ground taken by the Defendants** is that the entire sum of Rs.2,00,000/-, had already been repaid. However, as rightly observed by the learned Civil Judge, the plea of repayment was vague and bereft of particulars, inasmuch as no dates on which the alleged repayment was made had been disclosed. Neither any statement of account reflecting withdrawal of the amount for the purpose of repayment nor any receipt or other

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contemporaneous document evidencing such repayment, was placed on record to substantiate the defence.

34. It is also significant to observe that in the First Appeal, the Defendants asserted that the amount had been returned to the husband of the Plaintiff or his associates. Such a general plea, without particulars as to the date, mode or person to whom the alleged repayment was made, did not raise a genuine triable issue regarding repayment of the amount. *The two Courts below, therefore, rightly found that the bald plea of repayment, was insufficient to warrant grant of Leave to Defend.*

35. Another significant circumstance is that the cheque for Rs.2,00,000/- , is mentioned in the MoU itself. The signatures on the cheque have not been denied by the Defendants, though their case is that it had been issued merely by way of security, which is belied by the MoU, itself.

36. The **fourth ground taken by the Defendants** is that the said cheque was never presented by the Plaintiff for encashment. The mere fact that the cheque was not presented for encashment would not, however, negate the transaction recorded in the MoU. The cheque, even according to the Defendants, had been issued as security in relation to the underlying transaction and, when read along with the MoU, further belies the plea that there was no transaction whatsoever with the Plaintiff.

37. The **fifth ground taken by the Defendants** is that the Suit was barred under the *Punjab Registration of Money-Lenders Act, 1938*, which has been raised for the first time in the present Second Appeal. Even otherwise, the factual case set up by the parties does not support such a plea. The Plaintiff had specifically stated that the parties were known to each other through business relations, while the Defendants themselves had described the sum

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of Rs.2,00,000/- as an *“investment”* made by the husband of the Plaintiff with Defendant No.1. These assertions do not establish that the Plaintiff was carrying on the business of money-lending, so as to attract the bar under the aforesaid Act.

38. The learned two Courts have, therefore, rightly concluded that no genuine triable issue had been raised in the Application seeking Leave to Defend and consequently declined Leave to Defend while decreeing the Suit of the Plaintiff.

Conclusion:

39. From the aforesaid discussion, it is evident that *no substantial question of law arises for consideration,* in the present Regular Second Appeal. The grounds of challenge are essentially on facts, which have already been considered by the two Courts below and cannot be re-appreciated in the present Second Appeal.

40. No perversity or legal infirmity has been demonstrated in the concurrent findings returned by the Courts below, so as to warrant interference in the present Second Appeal.

41. There is, **accordingly, no merit in the present Appeal, which is hereby dismissed.**

42. The pending Applications, if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 03, 2026
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