**IN THE COURT OF MS TWINKLE WADHWA,
ADDITIONAL SESSIONS JUDGE-02, NORTH-EAST
KARKARDOOMA COURTS, DELHI.**

CA No. 226/2025

Sangini Co-ooperative Urban Thrift & Credit
Society Ltd.

...Appellant

Versus

Sh. Shiv Poojan
S/o Sh. Chandi Lal
R/o H.No. 257, Nanga Mohalla,
Ghondia, Delhi-110053

...Respondent

Date of assignment	:	04.11.2025
Date of Arguments	:	22.05.2026
Date of Pronouncement	:	30.06.2026
Conclusion	:	Dismissed

JUDGMENT

1. The present appeal has been filed against the judgment dated 04.09.2024 passed by Ld. JMFC (NI Act), North-East, Karkardooma, Delhi.

2. Facts of the case as are culled out from the judgment of the learned Trial Court are as follows:

'2. It is case of the complainant that accused is a member of the complainant'society being membership/account no. 339. The accused has taken a loan of Rs. 2 lac on 11.09.2019 from the complainant, repayable with interest @ 16% per annum to be repaid in 50 monthly installments and in case of any default a penal interest of 3% per annum shall be paid to the complainant. In this regard an application for sanctioning of loan and a bond was also executed by the accused. The accused promised to make the monthly installments regularly but failed to do so in spite of repeated requests and reminders by the complainant. Award against the accused was also passed on 25.06.2022 by Registrar Cooperative Society Delhi.

3. Accused has issued one cheque bearing no. 000002 dt. 04.09.2022 for Rs. 2,73,944/- drawn on Lakshmi Vilas Bank, Tolstoy Marg, Janpath, New Delhi-110001 in favour of the complainant in discharge of his liability against proper receipt full and final of the said loan account.

4. On the assurance of the accused, the complainant presented the abovesaid cheque for encashment with his bank but the said cheque was dishonoured and returned with remarks "Funds insufficient" vide returning memo 08.09.2022.

5. The complainant had sent a legal notice dated 14.09.2022 to the accused through his counsel regarding the dishonour of the aforesaid cheque through registered AD & speed post but the accused has neither discharged his liability nor make payment of the cheque amount and therefore, the *present complaint is filed by the complainant against the accused for the offence under Section 138 of the NI Act.".*

3. Vide judgment dated 04.09.2026, the complaint of complainant filed under section 138 N.I. Act was dismissed and accused was acquitted. Aggrieved by the judgment, complainant filed the present appeal.

Grounds of appeal and arguments

4. It is submitted by appellant that respondent had taken loan of Rs. 2 lakhs approximately. Respondent was not paying the installments thereafter, hence they went to he arbitration in terms of the Scheme of Cooperating Housing Societies Act and award was passed against respondent.

5. To discharge his liability towards the said arbitral award, the present cheque of Rs. 2,73,944/- was issued by him which was dishonored when presented. But the complaint was illegally dismissed by Ld. Trial Court, hence the present appeal has been filed. Further no question has been put to CW1 during cross examination regarding time of handing over the cheque. Further, Ld. Trial Court failed to appreciate that the cheque was issued against the order of Ld. Arbitrator, hence there was no need to file complete list of documents showing liability before the Ld. Trial Court.

6. It is submitted that CW1 deposed at the time of his cross examination that an amount of 40,581/- has been repaid and remaining amount has to be paid. But Ld. Trial Court observed that it is not mentioned how much amount is repaid. Further, Ld. Trial Court observed that there is difference of Rs. 10,000/- between arbitral award and the amount of cheque, however, Ld. Trial Court did not consider the fact that arbitrator allowed that interest. Further, Ld. Trial Court failed to appreciate the fact that respondent had not challenged arbitration award till date. Further, Ld. arbitration was filed in view of section 17 of Delhi State Cooperative Act, 2003.

7. On the other hand, Ld. counsel for the respondent submits that in the agreement, there was no arbitration clause. Unilateral appointment of arbitrator is bad in law in view of the recent celebrated judgment of Hon'ble Supreme Court. Further, the award of arbitrator is for an amount of Rs. 2,63,772/- while cheque amount is Rs. 2,73,944. This was a signed security blank cheque which was kept at the time of extending loan to the respondent and this cheque has been illegally unlawful altered by the appellant society later on. This cheque was never issued towards discharge of any liability of respondent on any arbitration award.

Findings

8. I have heard both the sides and have gone through the record of the case.

9. It is observed by Ld. Trial Court that documents regarding loan were not filed, however the same does not appear to be a correct observation as they were not really needed. A dispute which had arisen had culminated into an arbitration award, the award itself was not challenged before the Ld. Trial Court. Further observation made by Ld. Trial Court that arbitration proceedings were unilateral proceedings is also not correct as the award was not challenged by respondent till date. There is a mechanism to challenge an arbitration award in Court which is not done, hence observation by Ld. Trial Court that the arbitration was not lawful, in proceedings under section 138 NI Act was not correct.

10. It is further observed by Ld. Trial Court in para no. 33 that CW-1 did not depose how many EMIs were paid by accused and how many EMIs were defaulted which created doubt on the story of complainant. However, this observation is not correct as the dispute had already culminated into an arbitral award and the present cheque was issued against liability in arbitral award. Hence, the question of defaulted EMIs was not directly in issue before Ld. Trial Court.

11. Further, the arbitral cost of Rs. 21,193/- in Ex.CW1/10 was awarded by arbitrator. The observation of Ld. Trial Court that award of these arbitral cost was not justified, is not correct as arbitral award was not challenged as per mandate of Arbitration Act.

12. As far as the question whether the arbitration award is lawful or not, the same is not challenged herein before this Court nor was it challenged before Ld. Trial Court under Arbitration Act. There is a mechanism provided to challenge an arbitration award and respondent has not resorted to the same till date. Hence, the same cannot be challenged at this stage.

13. It is pertinent to mention here that award of the arbitration is on record. As per the award of the arbitration dt. 25.06.2022 which is an award by a sole arbitrator, the total amount awarded to the appellant including principal interest, penal interest and arbitration costs is Rs. 2,63,772/- It is also mentioned that appellant society is also entitled to interest and penal interest at the rate of 16 % + 3 % per annunm from 01.06.2022 till realization of the principal amount. However, the amount of cheque is Rs. 2,73,944/-. It is settled position of law that if the cheque is issued for a fixed and determined liability then only Section 138 applies. Hence, cheque should be issued towards definite, legal, enforceable debt or liability wholly or partly existing on the day of presentation of cheque. The amount on cheque cannot be unascertained, vague or contingent. On being enquired from appellant how this amount is determined on the cheque, appellant has drawn attention of the court towards page no. 55 of the appellant paper book which is as follows:

L/A - 2,00,000/- dt. 11-09-19 @ 16%

L/B 175801/- chq Amount - Rs - 273944

ब्याज (31-8-22) 70320 - chq dt. - 04-09-22

P. ब्याज 4330 - chq no - 000002

Cost 21193 - Lakshmi Vilas Bank.

Postage 2300 - Janpath, N. Delhi - 01

273944 - chq Return dt - 08-9-22

Reason - Fund Insufficent

(3) A/c - 64 - Sh. Rohit S/o Brij Mohan

Add H. No - B-7 Gali no-10 Ph. 10 Shiv Vihar dl-94

L/A 50,000/- dt - 13-06-18 @ 16%.

L/B 36337 - chq Amount - Rs - 65014 -

(31-8-22) ब्याज 20812 - chq dt - 04-09-22

P. ब्याज 1746 - chq no - 000001

cost 5069 IDFC Bank

Postage 1050 Bara Khamba Road, central

65014 Delhi - 01

chq Return dt - 08-09-22

Reason - Account is Dorment

(4) A/c - 252 Sh. Varan Singh S/o Ragunath Singh

Add H. No - A-36/1, Gali no-7 Phase - 10 Shiv Vihar

Delhi - 94

L/A 50,000/= dt - 19-12-18 @ 16%.

L/B 35169 chq Amount - Rs - 45540 -

ब्याज (31-8-22) 7035 chq Dt - 04-09-22

P. ब्याज 786 chq no - 257006

Postage 2550 Delhi Nagrik Sahkari Bank Ltd.

45540 - Yamuna Vihar Delhi - 53

chq Return dt - 08-09-22

Reason - Fund Insufficent.

जलपान के पश्चात सभा समाप्त की गई

धन्यवाद सहित

अध्यक्ष

अध्यक्ष

Sangeeta

सचिव

Certified that the above said A/c Position/True Copy Photocopy has been derived from the records of the Society which are believed to be true and kept ... T&C Society Ltd.

COPY TO COPY

22 OCT 2024

Sangeeta

President/Secretary

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Ex CW1/1

SANGINI CO-OPERATIVE U T & C SOCIETY LTD.

MMLDCJNE 18/5/25

Today on 20.09. 22 at 5:00 PM, the executive committee meeting was held in the society office. It was presided over by Shri Gopal Krishna Sharma (President). The right to write the proceedings was given to Anita Bhatia. The following proposals were passed in the meeting. The following signatories have participated: -

1. Shri Gopal Krishna Sharma -Sd-
2. Shri Varun Gupta -Sd-
3. Smt. Sangeeta Sharma -Sd-
4. Shri Lokesh Gupta -Sd-
5. Smt. Anita Bhati -Sd-

1. It was informed by cash section that the cheque for the loan and other amounts deposited by the following borrower member through account payee cheque were returned by the all banks due to various reason.

   Therefore, the executive committee passed the resolution that action should be taken against these members in the concerned court under section 138. This proposal was supported by all the present members. Sh. Lalit Kumaar (Recovery Officer) will prepare the necessary documents on behalf of committee. The details of Cheque is as follows.

   (i) A/C- 397- Sh. Shiv Darshan s/o Mahesh Chand, Add.- H.NO.-500/20, D-2 AC, Street No. 12, Vishwas Nagar, Shahdara, Delhi-32.

L/A-	2,00,000/-	dt. 03.03.21 @16%
L/B-	2,00,000/-	Cheque Amount-Rs. 2,38,066/-
Int. (31.08.22)	35,536/-	Cheque Dt.-04-09-22
P. int.	1230/-	Cheque NO. 914030

True Copy

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Postage	1300/-	IndusInd Bank
	238066	Greater Kailash New Delhi-48
		Cheque Return On 08-09-2022
		Reason – Funds Insufficient.

(ii) **A/C -339- Sh. Shiv Poojan s/o Chandi Lal, Add.- H.NO.- 257 Nanga Mohalla Ghonda, Delhi-53.**

L/A-	**2,00,000/-**	**dt. 11.09.21 @16%**
L/B-	**1,75,801/-**	**Cheque Amount-Rs. 2,73,944/-**
Int. (31.08.22)	**70, 320/-**	**Cheque Dt.-04-09-22**
P. int.	**4,330/-**	**Cheque NO. 000002**
Cost	**21,193/-**	**Lakshmi Vilas Bank**
Postage	**1300/-**	**Janpath, N. Delhi-01**
	2,73,944	**Cheque Return On 08-09-2022**
		Reason – Funds Insufficient

(iii) A/C -64- Sh. Rohit s/o Bri Mohan , Add.- H.NO.- B-7, Gali no. 10, PH. 10 Shiv Vihar, Delhi-94.

L/A-	50,000/-	dt. 13.06.18 @16%
L/B-	36,337/-	Cheque Amount-Rs. 65,014/-
Int. (31.08.22)	20, 812/-	Cheque Dt.-04-09-22
P. int.	1746/-	Cheque NO. 000001
Cost	5069/-	IDFC Bank
Postage	1300/-	Barakhamba Road, Central Delhi-01
	65,014	Cheque Return On 08-09-2022
		Reason – Account is Dormant

(iv) A/C -252- Sh.Varan Singh s/o Ragunath Singh, Add.- H.NO.-A-36/1 Gali No.7, Phase-10 Shiv Vihar, Delhi-94.

L/A-	50,000/-	dt. 13.06.18 @16%
L/B-	35,169/-	Cheque Amount-Rs. 45540/-
Int. (31.08.22)	7035-	Cheque Dt.-04-09-22
P. int.	786/-	Cheque NO. 257006

True typed copy

14. The above excerpt would show that despite there being an order by sole arbitrator for a specific amount, the society went on making its own calculation on some whimsical grounds, when the amount was quantified which was to be recovered. It was not open to the society to make its own further calculation whereby claiming postage charges. As per arbitration award, society was permitted to claim only interest @ of 16 % + 3 %. On being enquired from Ld. Counsel that this additional Rs. 10,000/- is interest for which period, there is no explanation coming. The counsel only referred to the above calculation for reading the amount on the cheque. The above calculation does not mention that the interest is calculated for which period beside adding postage charges. It is an arbitrary calculation after the passing of the arbitration award.

15. Further, the affidavit of CW-1 does not state that cheque was given in his presence, where it was given, when it was given, to whom it was handed over. The lack of details of handing over of the cheque creates doubt on the story of complainant and strengthens the case of respondent that it was given at the time of extension of loan and not after passing of arbitral award. The non-explanation of the exact amount on the cheque also weakens the appellant's case.

16. In view of above discussion, the appeal is dismissed. The judgment of Ld. Trial Court is upheld.

17. Appeal file be consigned to record room.

TWINKLE WADHWA
Digitally signed by TWINKLE WADHWA
Date: 2026.06.30 15:49:05 +0530

Announced in open court
today on 30.06.2026

(TWINKLE WADHWA)
Additional Sessions Judge-02
North-East, Karkardooma, Delhi