

**IN THE COURT OF MS. RUHELA SHARMA,
CIVIL JUDGE (JUNIOR DIVISION), KARNAL.
(UID No. HR-0567).**

CNR No. HRKR02-003812-2022
CIS No. CS/3007/2022
DATE OF INSTITUTION: 12.10.2022
DATE OF ORDER: 20.08.2025

Payal Malhotra Vs. M/s Haryana Steel Traders etc.

APPLICATION UNDER ORDER 39 RULES 1 and 2 READ WITH SECTION 151 OF CODE OF CIVIL PROCEDURE, 1908
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Present: Sh. Vishal Goel, counsel for plaintiff.
 Sh. Mehul Gupta, counsel for defendants.

ORDER:-

Vide this order, this court shall dispose of an application filed by applicant-plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as “CPC” for the sake of brevity).

**FACTUAL CRUX AND CONTENTIONS OF THE APPLICANT-
PLAINTIFF**

2. *Au fond*, the **factual crux of the present application** is that the applicant-plaintiff is proprietor of Hindustan A.D.V. Axle Company, Karnal which deals in manufacturing and sale of Agricultural Implements. The defendant is the proprietorship firm and defendant no. 2 is its proprietor and person in-charge for the functions and affairs of defendant no. 1. The plaintiff was dealing with the defendants since 2014. The plaintiff earlier

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used to purchase M/s Billet and MS Bar from the defendants, so the plaintiff was having dealings with the defendants.

3. In the year 2021-2022, there was an opening balance of Rs.2,34,879/- which was due and payable by the plaintiff to the defendants. In the year 2021-2022, the plaintiff made payment of Rs.2,75,000/- on different dates to the defendants. It is pertinent to mention here that the plaintiff made excess payment of Rs.40,121/- to the defendants and same is due to some misunderstanding. The plaintiff inadvertently had made excess payment of Rs.40,121/- in the account of defendants, which the plaintiff is entitled to recover from defendants. While the plaintiff was dealing with the defendants, she had issued thirteen security cheques i.e. four cheques of IDBI Bank (Cash Credit Limit Account) bearing No. 0351651100001885, five cheques of IDBI Bank (Current Account) bearing No. 351102000000435 and four cheques from Punjab National Bank (Current Account) bearing No. 3917002100007592.

4. After 01.04.2017, the plaintiff had not purchased anything from the defendant and only made payments till 23.06.2022. As such, after that there is no dealing between the defendants and the plaintiff. The plaintiff several times requested the defendants to return the aforesaid thirteen security cheques as they were containing the signatures of plaintiff but the defendants delayed the matter on one pretext or the other for the reason best known to them. Moreover, the bank accounts from which the said thirteen cheques have been issued are not operative and have been closed in the year

2019-2021 and in this regard, the plaintiff also got published a public notice on 23.06.2022 in the “Times of India” newspaper Delhi, Ghaziabad and Noida Edition to intimate about the closure of accounts to its customers and with the persons with whom the plaintiff is having dealings. But, the plaintiff is having apprehension that defendants may misuse the said cheques, as they are not returning the same despite repeated requests of plaintiff. *Accordingly, it is prayed that an ad-interim injunction by restraining the defendants not to use 13 blank signed security cheques and not to handover the same to any other person, till final decision of suit, be granted in his favour, in the interest of justice.*

CONTENTIONS OF THE RESPONDENT-DEFENDANT

5. Upon notice, **respondent-defendants have filed their reply** and stated that the defendants used to supply iron and steel goods to the plaintiff as per the order placed by the plaintiff. The entries of goods sold to the plaintiff and the payment made by the plaintiff to the defendants were duly recorded by the defendants in the ledger books maintained by them in due course of business. The plaintiff sent a legal notice dated 13.08.2022, upon the defendants demanding a sum of Rs.40,121/- along-with thirteen cheques. The said notice was duly replied to by the defendants on 26.08.2022 wherein the defendants demanded a sum of Rs.2,38,602/- from the plaintiff along-with interest @ 24% per annum as a sum of Rs.5,82,217/- fell due against the plaintiff.

6. The plaintiff had issued cheque no. 917420 dated 16.12.2022 for an amount of Rs.5,82,217/- drawn on Punjab National Bank, Karnal in the name of the defendant no. 1. However, on being presented, the said cheque was returned unpaid vide memo dated 19.12.2022 with the remarks "Account Closed" regarding which, the defendants have already filed a complaint under Section 138 of N.I. Act against the plaintiff at Delhi. As such, the present suit has been filed by the plaintiff as a counter-blast in order to create false evidence in her favour. Also, the relevant C-form was duly signed by the plaintiff vide which she acknowledged the outstanding and amount due against her. *It is therefore prayed that the suit filed by the plaintiff, may kindly be dismissed with costs, in the interest of justice.*

ARGUMENTS

7. This Court has heard the rival contentions raised by learned counsel for both the parties and has perused the case file carefully with their kind and able assistance.

8. The learned counsel for applicant has stated that there is an apprehension that the defendant may misuse the blank signed cheques and there is no outstanding liability against the plaintiff. In fact, the whole amount has already been paid and inadvertently an excess of Rs.40,121/- has been paid to defendants. Furthermore, the C-forms relied upon by the defendants are forged. Accordingly, it is prayed that the present application be allowed in the interest of justice.

9. *Per contra*, the learned counsel for the respondent-defendant has reiterated his contentions as already mentioned in his written reply. He has stated that the ledger accounts along-with C form placed on record clearly depicts outstanding amount against the plaintiff. Even otherwise, the fact qua outstanding liability of either party on the basis of documentary record is a matter of evidence. Also, the plaintiff is seeking injunction merely on ground of apprehension and presumption without any actual threat to his legal right. Infact, the present suit has been filed merely to create defence of plaintiff in the complaint case under Section 138 of N.I. Act against the plaintiff at Delhi. Accordingly, it is prayed that the present application be dismissed, in the interest of justice.

ANALYSIS AND REASONING

10. At this juncture, it would be apposite to pore over legal proposition in context of granting temporary injunction. The Hon'ble Apex Court in the case of "*Mahadeo Savlaram Shelke v. The Puna Municipal Corporation., J.T. 1995(2) S.C. 504*" while relying upon its earlier judgment in case titled as "*Dalpat Kumar v. Prahlad Singh(1992) 1 SCC 719*" has held that three core ingredients must co-exist before a court proceeds to grant temporary injunction and the burden of proving the same lies upon the applicant-plaintiff. These elemental ingredients are as follows:

- *Prima facie case is made out in favour of the applicant-plaintiff*
- *Balance of Convenience lies in favour of the applicant-plaintiff*

- *Irreparable Loss and injury, which cannot be compensated in any form or manner, will be caused to the applicant-plaintiff if the relief of temporary injunction is not granted*

11. These three terms are not rhetoric phrases of incantation, rather they are words of width and elasticity. At the outset, '*Prima facie case*' does not necessarily mean that plaintiff should establish his title to the suit property, instead there should be a probability of plaintiff getting a prima facie relief. Secondly, '*Balance of convenience should be in favour of plaintiff*' meaning thereby that if by refusing the relief of temporary injunction greater inconvenience will be caused to the plaintiff, then the relief of temporary injunction should be granted. Lastly, '*Irreparable loss and injury*' does not mean that there should be no possibility of repairing the injury rather it only means that injury must be material one. The burden of proving all these core ingredients lies upon the applicant-plaintiff.

12. Furthermore, the party claiming the relief of temporary injunction is not entitled to it as a matter of right. It is a result of the discretion of Court after factoring in aspects like conduct of the party approaching the court, whether the party has approached the court with clean hands, whether any true or material fact has been concealed by him and if the party can be adequately compensated in any form or manner. Hence, the discretion of granting the relief of temporary injunction should be exercised if comparative hardship, mischief or inconvenience which is likely to occur from withholding the injunction will be greater, than that which would be likely to arise by granting the injunction.

13. **Juxtaposing the afore-discussed legal proposition to the facts of the present application**, the plaintiff has contended that during the course of dealings with the defendants, she had issued thirteen blank signed security cheques to the defendant but after 01.04.2017 there have been no active dealings between the parties. It is alleged that the plaintiff only made payments till 23.06.2022 and inadvertently made excess payment of Rs.40,121/- to the defendants. To support this, the plaintiff has relied upon ledger account and Form-C qua the concerned dealings. Accordingly, it is argued that the plaintiff is having apprehension that defendants may misuse the said cheques, as they are not returning the same despite repeated requests of plaintiff.

14. At the outset, it appears that the plea of the plaintiff is founded on mere apprehensions on the basis of their understanding of the situation of the possibility of future threat. As such, it is a *quia timet* action for passing a preventive or precautionary permanent injunction against the defendants. In this context, it is settled proposition of law that a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. But, in the present case, the plaintiff has failed to prima-facie establish any imminent and certain threat upon the legal right of the plaintiff by the defendants.

15. Moreover, even if the plea of the plaintiffs is presumed to be true, then also it has been categorically admitted by the plaintiff in his

pleadings that the bank accounts from which the said thirteen cheques have been issued are not operative and have already been closed in the year 2019-2021 via publication in newspapers. As such, there is nothing on record to elicit the possibility of irreparable loss or injury to the plaintiff, incase the injunction is not granted in his favour.

16. Furthermore, in case any legal remedy is availed by the defendants on the premise of these blank signed cheques, then also the plaintiff has the right to defend his case in the concerned proceedings by adducing evidence. On the contrary, under the garb of injunction, this Court cannot indirectly restrain the defendants from instituting or prosecuting any proceedings in a Court on the premise of blank signed cheques of the plaintiffs; thereby affecting his legal remedies, as clearly envisaged under Section 41 of Specific Relief Act. Therefore, it appears that even the balance of convenience lies in favour of the defendants.

17. Lastly, the questions qua determining the outstanding liability of either party as well as reliability and genuineness of documents relied upon by both the parties is a matter of trial and shall be determined by this Court upon merits by appreciation of evidence adduced by the parties. ***Ergo, as a denouement to the above-made discourse***, this court is of the considered view that the applicant-plaintiff has failed to establish any prima facie case or balance of convenience in his favour as well as that any irreparable loss or injury, which cannot be compensated in any form or manner, will be caused if ad-interim injunction is not granted. Accordingly, ***application of***

the applicant-plaintiff filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC is hereby dismissed.

18. For the purpose of clarification, it is hereby made explicitly clear that the view taken by this court in disposing of the present application is only prima-facie, based upon the circumstances appearing from the pleadings, documents placed on record and as argued by learned counsel for both parties, and are only for the purpose of deciding this application. Nothing in this order shall be misconstrued as a reflection on the merits of the present case.

Pronounced in Open Court.

Dated: 20.08.2025

(Ruhela Sharma)
Civil Judge(Junior Division)
Karnal
UID No. HR-0567

Note: *This order contains nine (9) pages, all of which have been dictated, checked and signed by me.*

(Ruhela Sharma)
Civil Judge(Junior Division)
Karnal
UID No. HR-0567

(Khushboo)
Stenographer Gr.III
I attest to the accuracy and authenticity of this document

***(Ruhela Sharma)
Civil Judge (Junior Division), Karnal
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20.08.2025***

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Present: Sh. Vishal Goel, counsel for plaintiff.
Sh. Mehul Gupta, counsel for defendants.

Arguments heard on the application filed by applicant-plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. Now to come up after lunch for pronouncing the order.

Date of order: 20.08.2025

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Karnal
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Present: Sh. Vishal Goel, counsel for plaintiff.
Sh. Mehul Gupta, counsel for defendants.

File put up post-lunch. Order pronounced in open court. Vide separate order of even date by this court, *the application of the applicant-plaintiff filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC is hereby dismissed.*

Learned counsel for plaintiff stated at bar that he does not wish to file replication. Parties have not appeared before the Court for admission and denial. Counsel for the parties stated at bar that there are no chances of compromise between the parties and at this stage, they do not want to adopt any alternate mode of settlement. At this stage, in light of Order X of CPC, it is pertinent to frame the following issues from the respective pleadings of parties:-

1. Whether the plaintiff is entitled to recovery and declaration along-with consequential relief of permanent

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- injunction, as prayed for?**OPP**
2. Whether the plaintiff has got no locus standi and cause of action to file and maintain the present suit? **OPD**
 3. Whether the suit of the plaintiff is not legally maintainable in the present form?**OPD**
 4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?**OPD**
 5. Whether the plaintiff has not come to the court with clean hands & has concealed the true, correct & material facts from this Court?**OPD**
 6. Whether the suit is bad for mis-joinder and non-joinder of proper and necessary parties?**OPD**
 7. Whether the suit is properly valued for the purpose of Court fee and jurisdiction?**OPD**
 8. Relief.

No other substantial issues have been pressed upon or claimed.

Onus to prove not objected to. Now the case is fixed for **09.10.2025** for **evidence of plaintiff** upon filing of list of witnesses, process fee and diet money, if any within seven days of the said order, failing which the Plaintiff shall lose his right to seek the assistance of this court to summon the witness.

It is further clarified to learned counsels in the open Court that only three opportunities each will be given to them to conclude their respective evidence.

They are further directed to give their affidavits three days prior before the date fixed to the opposite counsel so that the evidence of

the witnesses and the cross-examination could be recorded on the date fixed for evidence.

Date of order: 21.08.2025

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Civil Judge(Jr. Division)
Karnal
(UID No.HR-0567)

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