

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.149 OF 2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.V.S.Badakh, advocate for the applicant.

Mr.G.V.Wani, advocate for Respondent No.5.

CORAM : S.V.GANGAPURWALA, J.

Date : 08.09.2015.

PER COURT :

1. Heard.

2. The present applicant has filed a suit bearing RCS No.37/1998, for recovery of an amount of Rs.3,278/- (Rupees three thousand two hundred seventy eight only) with future interest at the rate of Rs.24/- % p.a. The trial Court decreed the suit. The defendant filed appeal bearing RCA No.253/2005. The appellate Court allowed the appeal and dismissed the suit. Aggrieved thereby, the present Revision.

3. Mr.Badakh, learned counsel submits that the lower appellate Court has perversely appreciated the evidence on record. P.W.1 in his cross-examination has never admitted that the bills and cash memos do not bear signature of defendant. The signature of the

defendant and his son has been identified and proved by the plaintiff in his deposition. The extract of accounts is also placed on record which is maintained in ordinary course of business. The corroborative evidence in the form of bills and the cash memos as required U/s 34 of the Indian Evidence Act, is also placed on record. Cloth on credit was sold to the defendant vide various bills. The trial Court had properly scanned the evidence.

4. Mr.Wani, learned counsel submits that there is variance between the evidence and the proof. The fact of depositing Rs.1,277-50 by the defendant into the plaintiff's shop on 16.2.1995 is not pleaded in the plaint. The extract of accounts is not proved. The same is not compared with the original. The learned counsel further submits that the facts averred in the plaint do not find in the affidavit of P.W.1.

5. I have considered the submissions. I have also gone through the deposition and the documents.

6. The scope of Revisional jurisdiction is in a narrow compass. The Revisional jurisdiction can only be invoked, if the appreciation of evidence on the part of the Court below is perverse. In the cross-examination P.W.1 has nowhere admitted that the bills and the cash memos do not bear signature of defendant. In evidence PW 1 has clearly stated that the bills upon which the signature of defendant is there and in one of the bills, the signature of the son of

the defendant is made. The signatures are identified by the plaintiff. The contents of the said bill are proved by the plaintiff. Even the accounts are said to have been written by PW 1 in his own handwriting. The lower appellate Court has perversely appreciated the evidence on record and has held that PW 1 has admitted in his cross-examination that the bills produced on record do not bear signature of defendant. The same are proved as is held by the trial Court. The defendant has not stepped into the witness box to disprove the case of plaintiff.

7. As far as interest is concerned, though it is one of the condition in the bill that plaintiff can charge interest at Rs.2/- % p.m., the same appears to be excessive and not according to mercantile usage.

8. Considering above, I would award interest to the plaintiff from the date the amount due till filing of the suit at the rate of Rs.12/- % p.a. and from the date of filing of the suit at the rate of Rs.9/- % p.a.

9. In the result, I pass the following order :

a) The impugned judgment and order passed by the lower appellate Court is quashed and set aside. The order of the trial Court is also modified as under :

The defendant shall pay an amount of Rs.1,900/- (Rupees one thousand nine hundred) with interest at the rate of Rs.12/-%

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p.a. from 16.6.1995 till the date of filing of the suit and interest at the rate of Rs.9/- % p.a. on amount of Rs.1,900/- (Rupees one thousand nine hundred)from date of suit till realisation.

b) The Civil Revision Application is partly allowed. No costs.

(S . V . GANGAPURWALA, J .)

Dt.08.09.2015.
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