

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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SECOND APPEAL NO. 675 OF 2012
WITH CA/11217/2012 IN SA/675/2012

SATISH DARSHANLAL JAISWAL
VERSUS
BRIJMOHAN HARNARAYAN LADDHA AND ANR

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Advocate for Appellant : Mr. Deshpande Avinash S.

CORAM: T. V. NALAWADE,J.
DATED: 28th OCTOBER, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.416 of 2005 which was pending in the Court of Civil Judge, Senior Division, Jalna and also the judgment and order of Regular Civil Appeal No.186 of 2010 which was pending in the Court of District Judge-2, Jalna. The suit filed by present Respondent for recovery of amount of Rs.53,375/- is decided in his favour. Heard learned counsel for the Appellant.

2. It is the case of Respondent, plaintiff that he had given hand loan of Rs.35,000/- to defendant No.1 on 16th October, 2001 and Defendant No.1 agreed to return the money after one year. It is contended that the cheque of Rs.35,000/- dated 16th October, 2002 was given by the Defendant to plaintiff and one chit in which the transaction was mentioned, which was dated 16th October, 2001, was also given to the plaintiff. It is contended that when the plaintiff deposited the cheque in the bank for encashment on 26th November, 2002 the cheque bounced. It is contended that the notice was given by plaintiff to make the payment of this amount but defendant refused to accept the notice. It is contended that defendant No.2, a son of defendant No.1, had given guarantee for repayment of loan. In the suit, the plaintiff had made prayer of recovery of the aforesaid amount and the interest at the rate of 19% p.a. starting from 16th October, 2002. Defendant Nos.1 and 2 filed joint written statement. They admitted that loan was taken but they contended that the amount of Rs.25,000/- only was taken but that was taken in the year 1999 and not in the year 2001. It is admitted that

the cheque in question was handed over by defendant No.1 but he has denied that it was of repayment of the loan. He contended that the cheque was given by way of security and he had given a signature on a blank paper of letter pad and these two things are misused by plaintiff. It is contended that a criminal case was filed for the offence punishable under section 138 of Negotiable Instruments Act by plaintiff against defendant No.1 but the Judicial Magistrate First Class has acquitted the defendant No.1 in that case.

3. It is the case of defendants that initially the amount of Rs.25,000/- was written but some alteration and over writing is made to make the amount as Rs.35,000/- on the cheque. It is contended that the matter appearing on the chit bearing signature of defendant No.1 was written by the plaintiff. Another defence was taken that the amount was returned by the defendants.

4. On the basis of aforesaid pleadings, issues were framed. Both the sides gave evidence. The Defendant No.1 has admitted his signature appearing on the cheque and also the chit, a matter written on letter head of Hotel Sagar and these documents are exhibited and

considered in evidence by the Courts below. As the repayment was not proved, decree was given.

5. The learned counsel for Appellant submitted that when the loan transaction was of the year 2001 as per the case of plaintiff, the cheque bears the date of 2002 and this circumstance is sufficient to show that there is substance in the defence taken by the defendant No.1. He submitted that the change of year and the change of the amount can also be seen on the cheque with naked eyes.

6. The aforesaid contentions are considered by the Courts below and findings are given against the defendants. Decree is given as against defendant No.1. The circumstance that Criminal Court gave acquittal cannot come in the way of Civil Court in giving decree as civil case is decided on preponderance of probability. The findings of the Courts below are findings of fact. In view of nature of the defence taken by the defendant No.1 and aforesaid circumstances this Court holds that there is no material on the basis of which substantial questions of law can be formulated.

7. In the result, appeal stands dismissed.

8. In view of dismissal of the second appeal itself nothing further survives in the civil application for stay and the same also stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.28/10/2015
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