IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 421 OF 2011

Sou. Ranjana Rajan Bhokare ... Appellant

V/s.

Ram Gurupad Magdum ... Respondent

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Mr. S. G. Deshmukh i/b. Mr. Rakesh Patil, Advocate for the Appellant.
Mr. P. D. Pise, Advocate for the Respondent.

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CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 4, 2015.

P.C.

The trial Court dismissed the Special Civil Suit No. 277 of 1999, for recovery of an amount of Rs. 1,70,000/- paid to the defendants by way of three cheques at Exhibits – 70 to 72 dated 14th August, 1998. The Regular Civil Appeal No.163 of 2002, preferred by the plaintiff has also been dismissed on 17th July, 2010. The plaintiff is before this Court against the concurrent finding of facts recorded by both the Courts below.

2 The learned counsel for the appellant has taken me through the plaint. He urged that the plaintiff has come before this Court with a case that she has paid an amount of Rs. 1,70,000/- to the defendants by way of three different cheques dated 14^{th} August, 1998 marked as Exhibits – 70 to 72 for repayment of loan outstanding against the defendant to the Miraj Urban Cooperative Bank. These cheques were deposited in the account of the defendant. Inspite of repeated demands to make repayment of the said amount, the defendants refused to pay the said amount and therefore, the suit was filed on 26^{th} November, 1999.

3 The learned counsel has also taken me through the written statement filed by the defendants in which he has denied to have received an amount of Rs.1,70,000/-, as urged by the plaintiff. It is the defence raised that the defendant received an amount of Rs.3,00,000/- in respect of one transaction dated 13^{th} August, 1998 of plots in the layout of the defendant prepared by the husband of the plaintiff. At that time the husband of the plaintiff asked the defendant to lend him an amount of Rs.1,70,000/- to clear the income tax and sales tax dues. According to the defendant, he paid this amount to the husband

of the plaintiff in cash and it is refunded by the husband of the plaintiff by way of cheques at Exhibits – 70 to 72 dated 14th August, 1998. Hence, according to the defendant, the question of plaintiff paying an amount of Rs.1,70,000/- to him, did not arise. It was also the defence raised that the husband of the plaintiff has not been joined as party in the suit, and the suit was liable to be dismissed for non joinder of the necessary parties.

4 The learned counsel has taken me through the findings recorded by the Courts below. The Courts are concurrent in holding that the plaintiff has failed to establish that an amount of Rs.1,70,000/- was paid by the plaintiff to the defendant to satisfy the loan amount of the Bank. The plaintiff has not joined her husband as party to the suit and the suit is therefore liable to be dismissed for non joinder of the necessary parties. The Courts below have rejected the defence raised by the defendant that the husband of the plaintiff had obtained his signature on the blank papers and those are misused by the plaintiff.

5 The plaintiff did not enter the witness box but examined her husband who was holding a Power of Attorney. The

plaintiff also examined one Balu Swami, the accountant from the Miraj Urban Co-operative Bank. The defendant entered the witness box and examined himself. The learned counsel has taken me through the evidence of the accountant Balu Swami, examined by the plaintiff. He has also invited my attention to the finding recored by the Lower Appellate Court in paragraph 13 of its judgment wherein it is held that the cheques at Exhibits – 70 to 72 were issued from the account no. 25 at Exhibit – 75 of the plaintiff, and if the relevant entries dated 14th August, 1988 in respect of these four cheques are seen, it shows that the amount of cheques is shown in the credit of the plaintiff, instead of debiting the said amount from the account of the plaintiff. The learned counsel has urged that this is a totally perverse finding. He has invited my attention to the loan account and the evidence of Balu Swami, the accountant. He point out that in fact the amount has been debited in the loan account and not credited. It is the further submission of the learned counsel that once it is proved that the cheques were tendered to the defendant, the defendant has deposited it in his account, the amount contained in the cheques is realised, the burden of proof shifted upon the defendant to establish the defence which he has failed. According to him, there is no evidence on record to establish the defence raised by the defendant in his written statement.

6 The averment in the plaint is that the plaintiff has tendered three cheques dated 14th August, 1992, amounting to Rs.1,70,000/- to the defendants for discharge of loan of the Miraj Urban Co-operative Bank. It is alleged in the plaint that it was an amount of hand loan given by the plaintiff to the defendant. The plaintiff has not entered in the witness box to depose any such transaction between her and the defendant. The Power of Attorney holder of the the plaintiff is her husband who has entered the witness box, but it is not the case that the transaction was between the husband of the plaintiff and the defendant. All the three cheques are signed by the husband of the plaintiff, though the cheques were drawn and realised from the account of the plaintiff. In such a situation, even if the case of the plaintiff is accepted that cheques were tendered to the defendant who has deposited in his own account and realised the amount, that by itself would not be enough to hold that the transaction alleged in the plaint regarding advancing the hand loan, is proved. There is no evidence brought on record to establish the transaction of hand loan. On the contrary, the plaintiff has examined the accountant Balu Swami from the Miraj Urban Cooperative Bank

in which the loan account of the plaintiff as well as that of the defendant existed. A categorical statement is made in the deposition of the said witness that on the date of 14.08.1998, there were no outstandings in the loan account of the defendant. It is the categorical statement made by him that at no point of time the defendant was a defaulter in making payment of the loan amount. The theory of the plaintiff about advancing of hand loan to discharge the amount of loan obtained by the defendant is destroyed by the evidence of the witness examined by the plaintiff herself.

7 The plaintiff has to stand on his own legs and he cannot rely upon the weaknesses of the defendant, which is the well settled principle of law. Once it is held that the loan transaction has not been established, the receipt of total amount of Rs.1,70,000/- by itself would not make the plaintiff entitled to refund of the said amount by the defendant alongwith interest. The Courts below have recorded the finding that the suit was liable to be dismissed for non joinder of necessary parties namely, the husband of the plaintiff. It was a case where either the plaintiff was required to enter the witness box or her husband was required to be joined as party.

8 In view of this, no substantial question of law arises for consideration by this Court. Second Appeal is dismissed with the costs of Rs.5000/- to be paid to the High Court Legal Aid Sub Committee.

JUDGE