

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 563 OF 2015****ALONGWITH****CIVIL APPLICATION NO.1247 OF 2015****IN****SECOND APPEAL NO. 563 OF 2015**

Mr. Farookh Ahmed Meman)
Age : 42 years, Occ : Business,)
R/at : 745/301, Nita House,)
Bhavani Peth, Pune – 411 042) **..... Appellant**
(Original Defendant)

VERSUS

Mr.Kadeer Kadar Meman)
Age : 44 years, Occ : Business,)
R/at : 1870, Gafar Baig Estate,)
Camp, Pune – 411 001) **..... Respondent**
(Original Plaintiff)

Mr.Vaibhav Sugadare, i/b. Agasti Vibhute for the Appellant.

Mr.Tejas Dande, i/b. Tejas Dande & Associates for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 10th DECEMBER, 2015

JUDGMENT

By this appeal, the appellant has impugned order passed by the learned District Judge, Pune dismissing the appeal filed by the appellant (original defendant). The learned Joint Civil Judge Senior Division Pune has passed a decree in favour of the respondent herein (original plaintiff) thereby directing the appellant to pay to the respondent a sum of Rs.5,28,900/- along with interest at the rate of 8% per annum. The learned trial judge as well as the lower appellate Court

after considering the oral evidence and documentary evidence have rendered a concurrent finding that the appellant owed an amount of Rs.5,28,900/- to the respondent (plaintiff). The lower appellate court has rendered a further finding that the document dated 15th June, 2009 would fall within the definition of bond.

2. Learned counsel appearing for the appellant has canvassed two issues while impugning the order passed by the lower appellate court. It is submitted that though the lower appellate court has rendered a finding for the first time in the appeal filed by the appellant that the said document dated 15th June, 2009 was bond and though the original plaintiff had not paid the appropriate amount of the stamp duty on the said document which was adjudicated as bond by the lower appellate court, instead of the impounding the said document under the provisions of the Maharashtra Stamps Act, the lower appellate court has dismissed the appeal filed by the appellant on erroneous reasons.

3. The next submission of the learned counsel for the appellant is that there was no rate of interest provided in the document dated 15th June, 2009 and the transaction being not a commercial transaction between the parties, in view of section 34 of the Code of Civil Procedure, 1908, the court below could not have awarded more than 6% p.a. from the date of decree till payment.

4. Learned counsel appearing for the respondent on the other hand placed reliance on the findings rendered by the two courts and submits that no interference with such concurrent finding of fact is permissible by this court.

5. Insofar as first submission made by the learned counsel for the appellant that the the lower appellate court having rendered a finding that the document in

question was bond and since the sufficient amount of stamp duty was not paid thereon was bound to impound the said document is concerned, a perusal of the order passed by the lower appellate court clearly indicates that when the said document was tendered by the plaintiff in evidence before the trial court, no objection was raised by the appellant herein on the admissibility of the said document on the ground of insufficient payment of stamp duty thereon. The appellant also did not raise any objection in the alternative that the said document was a bond which would have attracted different amount of stamp duty and on non payment of appropriate stamp duty, the said document was inadmissible in evidence and was liable to be impounded.

6. In my view the objection about the insufficiency of payment of stamp duty ought to have been raised when the said document was tendered in evidence by the plaintiff and could not have been raised at the time of hearing of the suit or before the lower appellate court. The learned lower appellate court in my view has thus rightly rejected this objection and more particularly in paragraph 19 of the impugned order. No infirmity is found with the view taken by the courts below. In my view the view taken by the court below are in conformity with the law laid down by the Supreme Court and this court that the objection about the admissibility of a document has to be raised when the document is tendered in evidence and not after the same is marked as exhibit. There is thus no merit in this submission of the learned counsel for the appellant.

7. Insofar as second submission of the learned counsel for the appellant that the learned trial judge as well as the lower appellate court could not have awarded interest at the rate of 8% from the date of decree till payment and the same could be awarded only at the rate of 6% per annum under section 34 of the Code of Civil

Procedure, 1908 is concerned, it would be appropriate to refer to section 80 of the Negotiable Instrument Act, 1881. It is provided under the said provision that when no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs. Learned counsel for the appellant does not dispute that the writing executed by his client was a negotiable instrument. In my view both the courts having taken a view that the said writing was negotiable instrument, the provisions of section 80 of the Negotiable Instruments Act, 1881 stood attracted to the said instrument.

8. Be that as it may, since the court below have awarded interest at the rate of 8% and since the respondent (original plaintiff) has not filed any cross objection, I am not proposed to enhance the said rate of interest from 8% to 18% or to interfere with this part of the orders passed by the courts below.

9. In my view there is no substantial question of law arises in this second appeal. Second appeal is devoid of merits and is accordingly dismissed. In view of disposal of the second appeal, civil application does not survive and is accordingly dismissed.

[R.D. DHANUKA, J.]