

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

SECOND APPEAL NO.373/2015
WITH
CIVIL APPLICATION NO.834/2015

Anandrao Dinkarrao Mudrale ... Appellant

V/s.

Shamrao Maruti Shinde & Anr. ... Respondents

Mr. Manoj Pagonda Patil for the Appellant

CORAM: K.K. TATED, J.
DATED : OCTOBER 20, 2015

PC. :

1. Heard the learned counsel for the Appellant. This appeal is preferred by Defendant No.1 challenging the concurrent findings of facts recorded by both the courts below.

2. For the sake of brevity, the parties will be referred to as per their nomenclature in the suit i.e. Appellant – as Defendant No.1B, Respondent No.1 – as Plaintiff and Respondent No.2 as Defendant No.1A.

3. Few facts of the matter are, as under:

The Respondent Plaintiff filed Special Civil Suit No.260/2002 in the court of Civil Judge, Senior Division, Sangli for recovery of sum of Rs.1,04,103/- with 18% p.a. interest towards the work done for the

partnership firm Adnya Construction. The Plaintiff provided his tractor bearing MHU-09-4577 to the Defendant partnership firm for their work on terms and conditions that the partnership firm has to pay Rs.250/- per hr. by way of rent apart from actual consumption of diesel.

4. As the Defendants failed to pay the rental charges of the tractor, the Plaintiff issued notice calling upon the Defendants to clear his dues. At that time, the clerk of the Defendants viz. Sagar prepared a final account showing that the partnership firm was supposed to pay Rs.1,07,908/- to the Plaintiff (Exhibit 33). Thereafter the Defendant partnership firm issued a cheque of Rs.50,000/- dated 06/06/2001 (Exhibit 34) to the Plaintiff towards part payment of his rental charges. That cheque was dis-honoured by the partnership firm. Hence, the Plaintiff issued legal notice and called upon the Defendant to pay arrears of rental charges with 18% p.a. interest. The Trial Court, relying on Exhibit 33 and 34 i.e. extract of books of accounts as well as dis-honour of cheque held that the Defendants are liable to pay sum of Rs.1,04,103/- with 6% p.a. interest to the Plaintiff.

5. Though the summons were duly served on Defendant No.1A, partner of partnership firm, none appeared for them in the suit, hence, the matter proceeded exparte against one of the partners of the partnership firm.

6. Being aggrieved by the decree dated 11/03/2008 passed by the Trial Court, Defendant No.1B, one of the partners of partnership firm,

preferred Regular Civil Appeal No. 249/2008 before the Principal District Judge, Sangli. In that appeal, the Appellate Court framed following points for consideration :

Sr. No.	Points	Findings
1	Whether the Plaintiff is entitled for amount of Rs.1,04,103/- as claimed ?	Yes
2	Whether the Plaintiff is entitled for interest at the rate of Rs.18% p.a.?	yes, but at the rate of 6% p.a.
3	Whether the impugned judgment and decree requires interference ?	No
4	What order ?	As per final order

7. The Appellate Court, considering the evidence on record and Exhibit 33 and 34 dismissed the appeal preferred by Defendant No.1B. Hence, the present appeal is preferred by Defendant No.1B, one of the partners of partnership firm only.

8. The learned counsel for Defendant No.1B submits that both the courts below erred in coming to the conclusion that the Plaintiff proved that he is entitled to recover sum of Rs.1,04,103/- with 6% p.a. interest from the Defendants. He submits that the Plaintiff failed and neglected to place on record any contract between partnership and him. He further submits that even the Plaintiff failed to prove Exhibit 33 i.e. extract of statement of accounts. He submits that both the courts below failed to consider the fact that Defendant No.1A, one of the partners of partnership firm issued a cheque of Rs.50,000/- from partnership account for his personal liability. Hence, the act done by Defendant No.1A cannot be termed as work done on behalf of the

partnership firm. Hence, the judgment and decree passed by both the courts below are required to be set aside.

9. Heard the learned counsel for Defendant No.1B at length. The learned counsel for the Defendant No.1B placed on record a photocopy of the paper book in Regular Civil Appeal No. 249/2008 containing a copy of plaint, written statement, deposition of parties and other documents.

10. It is to be noted that in the present proceedings though Defendant No.1A, partner of Adnya Construction was duly served in the Trial Court, none appeared on their behalf. The matter proceeded ex parte. The Defendant No.1A issued a cheque of Rs.50000/- dated 06/06/2001 (Exhibit 34) towards the part payment of Plaintiff towards the rent charges, as per the contract. This itself shows that the Plaintiff carried out some work for the partnership firm. To discharge their liability, the Defendant No.1A issued the cheque. These facts are considered by the courts below in detail. Non-appearance on behalf of Defendant No.1A, itself shows that the partnership firm had accepted its liability.

11. The Apex Court in the matter of *Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95* held that the High Court, in Second Appeal can interfere with concurrent findings of facts only if substantial question of law arises in the appeal.

12. Considering the above mentioned facts, the law declared by the

Apex Court and also none appeared for Defendant No.1A and as decree is not challenged by partnership firm and the appeal before the Appellate Court as well as the present Appeal is filed by Defendant No.1B - partner in his individual capacity, I do not find any substantial question of law in the appeal. Hence, the Second Appeal stands rejected.

13. Consequently, the Civil Application for stay of the impugned order stands dismissed as infructuous.

(K.K. TATED, J.)