

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No.45 of 2015
(Arun s/o. Mahdeorao Anasane .vs. Rajendra s/o. Surajmal Manudhane)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr.N.P.Singhania, Adv. for the appellant.
Mr.A.P.Chaware, Adv. for the respondent.

CORAM : A.P.BHANGALE, J.

DATED : 30th JUNE, 2015.

Heard.

This appeal is preferred against the Judgment and Order dt.12.7.2012 passed by the learned Ad-hoc-2 District Judge, Yavatmal in Regular Civil Appeal No.16 of 2008 whereby the appeal was dismissed with costs. Challenge in Regular Civil Appeal No.16 of 2008 was to the Judgment and Order dt.1.1.2008 passed by learned 7th Joint Civil Judge (Jr.Dn.), Yavatmal in Regular Civil Suit No.38 of 2005. The Regular Civil Suit was instituted in the trial Court on the ground that the defendant had obtained loan in the sum of Rs.75,000/- from the plaintiff on 20.2.2002. The plaintiff when advanced the amount, the defendant had executed receipt on the stamp paper of Rs.20/- in presence of witnesses and a post dated cheque in the sum of Rs.75,000/-, dt.5.7.2002 drawn

on the Urban Co-operative Bank, Dutta Chowk branch, Yavatmal was handed over to him. The defendant had assured repayment by 5th July, 2002, but failed to pay the amount by the due date and though the plaintiff had presented the cheque for encashment, it was dishonoured for want of sufficient funds in the account of the defendant. Thus, the plaintiff had preferred a Criminal Case in the Court of Judicial Magistrate, First Class, Yavatmal u/s. 138 of the Negotiable Instrument Act. Simultaneously, a Civil Suit for recovery of money was also instituted. It is contended that the trial Court in a criminal case had acquitted the appellant/accused and the appeal preferred against that acquittal is still pending in the High Court.

It appears that, by Judgment and Order impugned herein, the learned Ad-hoc-2 District Judge, Yavatmal considered the fact, the defence raised by the defendant and upon evidence recorded on behalf of the plaintiff and the defendant, found that the defendant had borrowed loan in the sum of Rs.75,000/- from the plaintiff. The defence that a blank stamp paper and a cheque were handed over was disbelieved for want of evidence. The allegation that the plaintiff had misused the stamp paper and the cheque was also brushed aside and it was held that the amount for the sum of Rs.75,000/- was borrowed by the defendant and receipt (Exh.37) was executed. The fact that, after the cheque was presented to the bank, it was dishonoured for want of sufficient funds in the account of the

defendant was also taken note of by the Courts below. Thus, in a suit to recover sum of Rs.1,00,000/- together with interest on the basis of dishonoured cheque drawn on the Urban Co-operative Bank, Dutta Chowk branch, Yavatmal was examined. Both the Courts below found by concurrent view that the sum of Rs.75,000/- was advanced by the plaintiff to the defendant under a written receipt and the cheque in the sum of Rs.75,000/- was issued being drawn on the Urban Cooperative Bank, Dutta chowk, Yavatmal. The fact was considered that there was no sufficient funds in the bank account of the defendant at Urban Cooperative Bank, Dutta Chowk branch, Yavatmal and the cheque was presented through Syndicate Bank, Yavatmal branch by the plaintiff.

The learned Counsel for the appellant submitted that since Criminal Court had acquitted the defendant/accused, the fact of acquittal ought to have been considered by both the Courts below so as to dismiss the suit. According to the learned Counsel for the appellant, u/s.43 of the Indian Evidence Act, the Judgment and Order passed by a Criminal Court resulting in acquittal of the defendant would be relevant and ought to have been taken into consideration by the Courts below so as to non-suit the plaintiff. It is, therefore, submitted that substantial question of law is involved in the present appeal.

The learned Counsel for the appellant, to support his submission, placed reliance upon the ruling

in the case of K.G.Premshanker .vs. Inspector of Police and another reported in (2002) 8 SCC 87 wherein the Hon'ble Supreme Court considered the effect of decision in Criminal Case in the proceedings in the Civil Court. Hon'ble Supreme Court in para 16 observed that Sections 40 to 43 of the Evidence Act provide which Judgments of Courts of Justice are relevant and to what extent. There cannot be any quarrel over the proposition that the Judgment and Order in respect of the fact in issue is relevant when produced for perusal of the trial Court or first Appellate Court. The previous Judgment which is final can be relied upon as provided u/ss.40 to 43 of the Evidence Act. If the previous Judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act. In civil suits between the same parties, principle of res judicata may apply. If the criminal case and the civil proceedings are for the same cause, Judgment of the Civil Court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41, which provides which judgment would be conclusive proof of what is stated therein if it is final Judgment.

Learned Counsel for the respondent then invited my attention to the ruling in the case of Devendra and Others vs. State of Uttar Pradesh and another reported in 2009 (7) SCC 495. Hon'ble Supreme Court was dealing with identical issue and

referred to the case of Shanti Kumar Panda v. Shakuntala Devi reported in (2004) 1 SCC 438, in which it was held that a decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court. Civil proceedings as well as Criminal proceedings can thus run simultaneously, but result in one proceedings would not be binding on the Court determining issue before it in another proceedings unless of course, if Judgment is final. Herein, in the facts and circumstances of the present case, although defendant may have been acquitted, the appeal preferred against acquittal is pending in the High Court. Thus, the Judgment of acquittal in the facts and circumstances of the case is not final. On the other hand, there are concurrent findings of facts recorded by the Civil Judge (Jr.Dn.), Yavatmal i.e. trial Court as well as the first Appellate Court i.e. Adhoc-2 District Judge, Yavatmal. On the basis of evidence adduced by the parties, the trial Court as well as the appellate Court found that the sum of Rs.75,000/- was advanced by the plaintiff to the defendant. The transaction was also supported by written receipt as well as the cheque which was issued and dishonoured apart from the oral and other documentary evidence on record. Thus, upon evidence, it was concurrently held that the plaintiff is entitled to recover sum of Rs.75,000/- together with interest @ 6 % p.a. In the facts and circumstances of the case, when there was no final Judgment by the Criminal Court

regarding acquittal, the Civil Courts while deciding the claim for recovery of the amount advanced on loan were not bound to consider the decision of acquittal which was not by final Judgment since appeal preferred against it was pending. The Civil Courts are competent enough to consider the entire documentary as well as the oral evidence adduced before them and to concurrently hold on the basis of evidence the right of the plaintiff to recover the amount together with interest thereupon. On evidence, it was established that the defendant had taken loan in the sum of Rs.75,000/- and failed to repay that amount. Thus, he was directed to repay that amount together with interest @ 6 % p.a. till repayment of the entire amount due from the defendant. In the facts and circumstances of the case, none of the Courts below can be imputed with blame of having taken decision contrary to law. Hence, I do not find any substantial question of law arising in the Second Appeal. Hence, the Second Appeal is dismissed with costs.

JUDGE

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