

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.488 OF 2014.

(ATUL NARAYANRAO BORKAR...VS..SURESH WASUDEO BONDE.)

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

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : NOVEMBER 24, 2015.

Heard Shri S.P.Kshirsagar, advocate for the appellant. Shri C.N. Deshpande, advocate for the respondent has submitted that the respondent has taken away the papers and therefore, he is unable to assist the Court.

2. The appellant / original defendant has challenged the judgment and decree passed by the subordinate Courts concurrently upholding the claim of the respondent/plaintiff for the amount of Rs.50,000/- which, according to the respondent/ plaintiff, was given to the appellant as hand loan.

3. The learned advocate for the appellant has submitted that the findings recorded by the subordinate Courts that the respondent has given hand loan of Rs.50,000/- are not supported by the evidence on the record. It is submitted that the case of the respondent is that he had taken loan from G.P.F. and had paid the amount to the appellant, however, the evidence of Shri Sartaj Singh, Senior General Manager shows that the respondent had taken loan of only Rs.25,000/- and it is not explained by the respondent as to from where the balance amount of Rs.25,000/- was

adjusted by him.

4. The learned advocate has further relied on the evidence of Shri Athale, Handwriting Expert and has submitted that the subordinate Courts have committed an error in concluding that the signature on the document- Usanwar Patra (Exh.15) is not of the appellant. It is submitted that the civil suit was bad for non-joinder of all the trustees of the trust for which the loan was given, according to the respondent. It is submitted that the judgment and decree passed by the subordinate Courts is unsustainable for the above reasons.

5. After going through the documents placed on the record of the appeal, I find that the trial Court has exhaustively dealt with all the factual aspects in paragraph 25 of the judgment. The trial Court has recorded that two attesting witnesses on the document (Exh.15) i.e. P.W. 2 and P.W. 3 have supported the case of the respondent. The trial Court has recorded that the evidence of the handwriting expert does not inspire confidence as he himself has stated that the opinion cannot be given on the basis of specimen signatures.

6. The learned District Judge has concurred with the findings recorded by the trial Court after considering all the challenges raised by the appellant and examining the evidence on the record. It is not permissible for this Court to reappraise the evidence while considering the appeal under Section 100 of the Code of Civil Procedure, unless it is found that the findings recorded by the subordinate Courts are perverse. The appellant has not been able to point out any

perversity in the appreciation of evidence by the subordinate Courts which necessitates the interference by this Court.

7. The ground raised by the appellant regarding non-joinder of the trustees cannot be considered at this stage as it was not raised before the trial Court. The appellant has not been able to point out any substantial question of law which requires consideration.

8. In view of the above, I see no reason to interfere with the judgment and decree passed by the trial Court. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

CAS NO. 1320/2015.

In view of disposal of the writ petition, the application praying for interim order is rendered infructuous. It is disposed of accordingly.

JUDGE