

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

SECOND APPEAL NO.108 OF 2013

Devendra s/o Haridasji Dhawane

-vs-

Bapurao Goods Garriage Wardha Thr. Proprietor Vijay S/o Bapuraoji Jadhav

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders.

Shri S. D. Khati, Advocate for appellant.
Shri S. A. Choudhari, Advocate for respondent.

CORAM : A.S.CHANDURKAR J.

DATE : FEBRUARY 24, 2015.

This appeal at the instance of original defendant challenges the decree passed by the trial Court directing the defendant to pay Rs.45,000/- to the plaintiff with interest @ 18% p.a. from the date of the suit till actual realization. The said decree has been confirmed by the first appellate Court.

It is the case of the respondent-original plaintiff that he was running a Goods Garage and the defendant who was his friend had requested him for grant of hand loan for a sum of Rs.45,000/-. Said amount was duly advanced and in lieu thereof the defendant issued a cheque for said amount dated 19/12/1998. Aforesaid cheque was however dishonoured on account of "insufficient funds".

The plaintiff therefore issued a legal notice under the provisions of Negotiable Instruments Act, 1881 (for short

the said Act). He thereafter filed a criminal complaint case against the defendant under the provisions of the said Act. He also filed suit for recovery of amount of Rs.45,000/- with interest.

The defendant filed written statement and raised a plea that the amount of Rs.45,000/- by cheque had given to the plaintiff towards guarantee of repayment of B.C. amount. It was further stated that the cheque in question had been misused and hence dismissal of the suit was sought.

While the plaintiff examined himself as well as one witness who was working in the bank, the defendant examined himself. The second witness examined by him could not be cross examined.

The trial Court after considering the evidence on record held that in view of Section 118 of the said Act, there was a legal presumption in favour of the plaintiff and the defendant had not proved his defence. It was also held that the stand as taken by the defendant in criminal proceedings was different from that which was taken in the civil proceedings. Hence the suit came to be decreed and in terms of Section 80 of the said Act, interest @ 18% p.a. was awarded on the cheque amount.

The first appellate Court on re-considering the entire evidence, confirmed the decree passed by the trial Court.

The learned counsel for the appellant submitted

that both the Courts erred in accepting the case of the plaintiff. The amount was advanced by way of security and hence the decree could not have been passed on the basis of cheque at Exhibit-23. It was further submitted that the trial Court had re-framed issues and proper opportunity to the defendant to lead his evidence had not been granted. It was also submitted that award of interest @ 18% p.a. was not in accordance with law.

The learned counsel for the respondent supported the impugned decree. He submitted that execution of the cheque had been duly proved. Similarly, by examining a witness from the bank, the necessary records have been produced which supported the plaintiff's claim. He submitted that both the Courts rightly disbelieved the stand taken by the defendant. It was also submitted that award of interest @ 18% per annum was in terms of Section 80 of the said Act.

I have considered aforesaid submissions and I have also gone through the record and proceedings of the case. The execution of cheque by the defendant has been held to be duly proved in favour of the plaintiff. The stand as taken by the defendant that the cheque was given by way of guarantee in the B.C. Scheme has not been accepted as it was contrary to the defendant's own stand taken in the criminal proceedings that said cheque had been given by way of security. The second witness who was examined by the defendant could not be cross-examined on account of his death. Hence there was no other evidence on record except

that led by the defendant himself. The first appellate Court has considered the aspect of recasting of one issue and has held in paragraph 9 of its judgment that the same did not cause any prejudice to the interests of the defendant as there was no difference whatsoever in the issues that were already framed and the reframed issue.

As regards grant of interest @ 18% per annum, it is to be noted that in terms of Section 80 of the said Act, as no rate of interest was specified on the cheque at Exhibit-23 nor is the case that the interest of lower rate was agreed to be paid, the matter would be governed by provisions of Section 80 of the said Act.

The submission of the learned counsel for the respondent that as in proceedings under Section 138 of the said Act, an order had been passed against the defendant, the rate of interest should be reduced, cannot be accepted. Provisions of Section 80 do not permit any such course to be followed. Hence no fault can be found with award of interest @ 18% per annum.

In view of aforesaid, the second appeal does not give rise to any substantial question of law. The findings recorded are pure findings of fact. Hence the second appeal stands dismissed with no order as to costs.

JUDGE