

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 422 OF 1991

Dena Bank

..... APPELLANT

V E R S U S

M/s Shankarlal Gulabchand & Co.
& Anr.

..... RESPONDENTS

.....

None for Appellant.

Mr. P.S.Shendurnikar, Advocate for R.No. 2.

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CORAM : T.V.NALAWADE, J.

DATE : 16th APRIL, 2016

ORAL ORDER :-

. Seen the order made by this Court on 29/03/2016. Nobody is turning for the appellant. The matter will be dismissed if no interest is shown to prosecute the same. When this Court was about to dismiss the matter, learned counsel for original respondent No. 1 submitted that he wants to argue the matter as he wants to show that he is entitled to assail the decree given by the trial Court and first appellate court against him.

2. Money decree was given by the trial Court only against defendant No. 2. He did not challenge the decree, but the plaintiff challenged the decree as no liability was fastened on defendant No. 1 – bank. First Appellate Court held that defendant Nos. 1 and 2 are jointly and severally liable to pay the amount and this decision is challenged by defendant No. 1. Thus, in the First Appeal, the decree given against defendant No. 2 was little bit diluted as liability was fastened as against the bank though jointly and severally. It can be said that to the extent of the liability fastened on defendant No. 2, the decision has become final. Learned counsel for original defendant No. 2 placed reliance on the case reported in (1999) 7 Supreme Court Cases – 435 [Ravinder Kumar Sharma Vs. State of Assam & Ors.]. The Apex Court taken into consideration the provisions of Order 41 Rule 22 (1) of the Code of Civil Procedure. There is no dispute over the proposition made. It can be said that original defendant No. 2 virtually wants setting aside of the decree. In view of these circumstances, the observations made by the Apex Court can be of no help to defendant No. 2 as he did not prefer Appeal against the decree. So, this submission is not acceptable.

3. In view of the above, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]

