

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

SECOND APPEAL NO. 167 OF 2015

1. Smt. Hirabai Sahadu Sonawane

Age : 47 Yrs., Occ. Household,

R/o : Himalayacha Mala,

Solapur road, Ahmednagar,

Dist. : Ahmednagar.

2. Sandip Sahadu Sonawane

Age : 36 Yrs., Occ. Service,

R/o : Himalayacha Mala,

Solapur road, Ahmednagar,

Dist. : Ahmednagar.

..... APPELLANTS

V E R S U S

Ravi Vishwanath Dethe

Age : 47 Yrs., Occ. Labour,

R/o : At Post : Shendi,

Tq. Nagar, Dist. Ahmednagar.

..... RESPONDENT

.....

Mr. N.V.Gaware, Advocate for Appellants.

Mr. K.D.Bade Patil, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 16/04/2016

JUDGMENT :

1. The Appeal is filed against the Judgment and Decree of R.C.S. No. 631/2003 which was pending in the Court of the Civil Judge [Sr.Division], Ahmednagar and also against the Judgment and Decree of R.C.A. No. 385/2014 which was pending in the District Court, Ahmednagar. The Suit filed by present respondent for recovery of money is decided in his favour. Both sides are heard.

2. It is the case of respondent/plaintiff that defendant Nos. 1 and 2 were in need of money and due to previous acquaintance, they approached him and requested for hand loan of ₹ 48,000/-. Defendant No. 2 is son of defendant No. 1. It is contended that on 07/10/2002, plaintiff gave hand loan of ₹ 48,000/- to the defendants and they promised to return the money when demanded back by the plaintiff. It is contended that on stamp paper of ₹ 20/-, the agreement was written and the document was also used as receipt and the amount was

paid to defendant Nos. 1 and 2 by the plaintiff. It is contended that as the plaintiff was in need of money, he asked the defendants to return the money and ultimately notice was also given on 22/08/2003, but the defendants did not make repayment of money, so cause of action took place for the Suit. In the Suit, he had prayed for recovery of amount and interest @ 18 % per annum.

3. The defendants filed joint written statement and contested the matter. They contended that one litigation was going-on between the father of plaintiff and mother of defendant No. 1 in respect of agricultural land and in that connection plaintiff had obtained signatures of defendant Nos. 1 and 2 on one stamp paper. It is contended that the stamp paper was blank and that stamp paper is mis-used by the plaintiff. It is contended that no money was taken as hand loan and they are not liable to give anything to the plaintiff.

4. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. Plaintiff examined himself and he examined one Advocate Mr. Avhad, in whose presence the document was executed. One Sk.

Ayub, who was working as clerk with the said Advocate is examined as scribe of the document. These 3 witnesses have given evidence as per the aforesaid contentions made in the plaint. The said document is exhibited in their evidence.

5. Defendant No. 1 has given evidence in rebuttal. In the pleading and in the evidence, she has admitted the execution of document though she contended that the signature was obtained on blank stamp paper. One witness Rajesh is examined, but his evidence does not show that he was present when the document was executed. Notice given through Advocate is duly proved as Exh. 41 and the acknowledgement receipt is also produced to show that the notice was served on defendant No. 1. This notice was not replied by the defendants.

6. The disputed document show that there is signature of defendant No. 1 on the document and that signature was put after fixing revenue stamp at the place of the signature. Thus, the document was also to be used as a receipt of the amount. There is substantive evidence

of aforesaid 3 witnesses examined by the plaintiff to prove that the amount of ₹ 48,000/- was actually handed over to the defendants. Defendant Nos. 1 and 2 have filed joint Written Statement and they have come with the case that they were together when signatures were put on the document. On the document, there is no signature of defendant No. 2, but in view of the defence taken of aforesaid nature, the Courts below have held that both the defendants are liable to pay the amount mentioned in the document. It appears that the document is treated as bond and the Suit is decreed on the basis of this document and oral evidence.

7. In view of the nature of defence taken by the defendants and as there is no plausible explanation for execution of such document, the Courts below have decided the Suit against the defendants. The Courts have believed the witnesses examined by the plaintiff. The findings given are question of facts and there are concurrent findings. No substantial question of law as such is involved in the matter. No probability is created by the original defendants of any kind due to which other inference could have been drawn. Thus, it is not possible

to interfere in the decision given by the Courts below and the Appeal stands dismissed. In view of dismissal of the Second Appeal, C.A. No. 4416 of 2015 does not survives and stands disposed of.

[T.V.NALAWADE, J.]