

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

**Civil Application No.4484 of 2002
In
Second Appeal No.203 of 1998**

Kachrual s/o Bastimal Jain. **.. Applicant.**

Versus

Prabhu s/o Baburao Kakade. **.. Respondent.**

Shri. G.K. Thigle-Naik, Advocate, for applicant.

CORAM: T.V. NALAWADE, J.

DATE : 14th JUNE 2016.

ORDER:

1) The application is filed for review of the order made by this Court on 12-3-2001 by which Second Appeal No.203 of 1998 is dismissed by holding that no substantial question of law as such is involved in the matter. Heard learned counsel for the applicant.

2) Appellant had filed suit for relief of specific performance of agreement. He had contended for consideration Rs.20,000/- the defendant had agreed to sell

him 9 acres 7 gunthas land. It is the case of the plaintiff that he had paid total amount of Rs.4,500/- till the date of agreement and the period of one year was given by the defendant at the time of execution of sale deed.

3) The defendant contested the suit. He contended that there was no agreement of sale but it was loan transaction and for the security of the loan the document was executed. The trial Court decreed the suit by holding that there was agreement of sale. The first appellate Court touched the provision of section 91 and 92 of the Evidence Act and on the basis of material available held that it was the loan transaction and set aside the decision of the trial Court. The first appellate Court further directed the defendant to return amount of Rs.4500/- admittedly received by him along with interest at the rate of 6% per annum.

4) This Court had considered the reasoning given by the first appellate Court and it is held that there is no possibility of interference in the findings given by the first appellate Court.

5) The learned counsel for the applicant submitted that it was discretionary relief which was given by the trial Court and the first appellate Court ought not to have interfered in the discretionary power used by the trial Court. The learned counsel placed reliance on the following reported cases.

- (1) **(1996) 4 SCC 551 (Tamil Nadu Electricity Board. v. N. Raju Reddiar);**
- (2) **(2015) 1 SCC 705 (Zarina Siddiqui v. A. Ramalingam).**

6) Though this Court had not mention specific circumstances, there is some record like entries made in Khata Vahi maintained by the plaintiff at Exhibits 52 and 53 showing even prior to the date of agreement some amount was given by the plaintiff, not under agreement of sale, to the defendant. The plaintiff is businessman and the defendant is agriculturist. Possession was not given to the plaintiff and the time of one year was given. Learned counsel or the applicant submitted that the defendant did not examine independent witness to prove that it was loan transaction. If there is material like in the present

matter there is no such necessity. The first appellate Court has considered the entire material on record and so this Court held that no substantial question of law as such is involved. There is no scope of review of the order made by this Court. The application is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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