

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 96 OF 2015

SHRI.KIRANSINGH RAJPUROHIT. ... Appellant
Versus
MR.SANTOSH LAXMAN GAWAS. ... Respondent

Mr. R. J. Pinto, Advocate for the appellant.

Coram:- F. M. REIS, J.

Date:- 16th April, 2016

ORAL ORDER :

Heard Mr. R. J. Pinto, learned counsel appearing for the appellant.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the respondent for recovery of money of a sum of Rs.50,000/- together with interest thereon came to be decreed.

3. The learned counsel appearing for the appellant has pointed out that the Courts below have misconstrued the evidence on record and the defence raised by the appellant to erroneously come to the conclusion that the respondent has established that a sum of Rs.50,000/- was payable to the respondent. The learned counsel further pointed out that the evidence on record clearly shows that the counterfoils which were relied upon by the respondent were filled up

by the brother of the appellant to deposit a specific sum of amount in the account of the appellant. The learned counsel further pointed out that though the appellant accepts the receipt of a sum of Rs.25,000/- nevertheless, the appellant disputes the second instalment of Rs.25,000/- as according to him such amount was given by the brother of the appellant to the respondent to be deposited in the account of the appellant. The learned counsel further pointed out that these counterfoils in the hands of the respondent have been misused to file the present suit for recovery of such amount of Rs.50,000/-. The learned counsel further points out that the business dealings, if any, were with the father of the respondent and not with the respondent and consequently, the respondent had no locus to file the present suit. The learned counsel has extensively taken me through the judgments of the Courts below to point out that the defence of the appellant has not been properly appreciated and as such the findings rendered by the Courts below are perverse. The learned counsel thereafter has taken me through the counterfoils at Exhibit 38 colly to point out that though the counterfoils pertain to the deposit of the sum of money in the account of the appellant nevertheless, such amount was handed over by the brother of the appellant to the respondent to be deposited in the account of the appellant. The learned counsel as such points out that there are substantial questions of law which arise in the present appeal and presses for substantial questions of law as proposed at clause ii, iv, v and xiv. The learned counsel as such submits that the above appeal deserves consideration.

4. I have duly considered the submissions of the learned counsel and I have also gone through the records. Both the Courts below on appreciating the evidence on record have come to the conclusion that the fact that the amount was deposited by the respondent in the account of the appellant has not been disputed. Even the learned counsel appearing for the appellant during the course of the arguments does not dispute that the amount was in fact deposited in the account of the appellant herein. The only defence raised by the appellant is that the second instalment of a sum of Rs.25,000/- was an amount which was handed over by the brother of the appellant in the hands of the respondent to be deposited in the account of the appellant herein. But however, both the Courts below upon appreciating the evidence on record have disbelieved the said defence of the appellant. The Courts below have clearly drawn inferences on the basis of the material and evidence on record to come to the conclusion that such defence has not been established by the appellant. Admittedly, there is no documentary evidence to substantiate such contention sought to be raised by the appellant herein. The substantial questions of law which have been pressed by the learned counsel appearing for the appellant would entail re-appreciation of evidence which is not permissible in terms of Section 100 of the Civil Procedure Code. This Court sitting in a Second Appeal cannot re-appreciate the evidence to examine the

correctness or otherwise of the concurrent findings of fact arrived at by the Courts below unless there is any specific material which has been overlooked by the Courts below or there is any misreading of the evidence. In the present case, there is nothing pointed out on that count by the learned counsel appearing for the appellant and as such, I find that there is no perversity in the concurrent findings arrived at by the Courts below. In such circumstances, I find that there are no substantial questions of law which arise in the present Second Appeal for consideration in terms of Section 100 of the Civil Procedure Code. Hence, the appeal stands rejected.

F. M. REIS, J.

at*