

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***SECOND APPEAL NO. 456 OF 2014
with
CIVIL APPLICATION NO. 1063 OF 2014***

Mr. Shesharao Keshavrao Dole. ... Appellant.
V/s.
Mr. Namdeo Tukaram Darade. ... Respondent.

Mr. Mahindra Deshmukh for the Appellant.
Mr. Priyal Sarda for the Respondent.

CORAM : N.M. Jamdar, J.

12 July, 2016.

P.C. :-

The Appellant challenges the concurrent findings of the learned District Judge, Solapur and Civil Judge, Senior Division, Barshi wherein the Suit filed by the Respondent – Plaintiff was decreed and the Appeal filed by the Appellant was dismissed with a modification of reduction in the rate of interest. The learned Civil Judge directed the Appellant to pay an amount of Rs.1,28,500/-.

2. I have heard the learned Counsel for the parties.
3. The learned Counsel for the Appellant submitted that the Appellant had not agreed to pay interest on the amount of

Rs.1,40,000/- and there is no reference to payment of interest on Rs.1,40,000/- in the sale deed. He submitted that it was only on Rs.1,00,000/- at the most that interest was agreed to be paid. The learned Counsel also submitted that the Suit filed on 31 March 2005 was beyond limitation from the date amount was paid to the Appellant.

4. As regard the payment of interest is concerned, the recital in the sale deed shows that reference to pre-payment of the principal amount + interest. The principal amount is mentioned in the deed which is Rs.1,00,000/- + Rs.40,000/-. Both the Courts have interpreted this deed coupled with admission of the Appellant that the interest was on principal amount mentioned in the deed. The interpretation placed on the document coupled with the admission of the Appellant cannot be stated to be an impossible interpretation. Both the Courts have assessed the oral evidence alongwith the deed to come to the conclusion that the Appellant failed to pay the amount as agreed under the deed. It is not possible to re-appreciate the evidence in the limited jurisdiction under Section 100 of the Code of Civil Procedure.

5. As regard the question of limitation is concerned, the Suit was filed on the basis that the Appellant would pay the amount towards the loan arrears and the interest, which the Appellant failed to pay. Since the Respondent – Plaintiff had to pay the amount with

interest to the bank and thereafter, demanded the said amount by way of notice dated 23 July 2002, the Suit filed on 31 March 2005 was within limitation. Therefore, the argument that the Suit was not within limitation cannot be accepted. The learned District Judge had reduced the rate of interest from 10% to 6%.

6. Considering the arguments advanced and facts and circumstances, no question of law arises, much less substantial question of law. The arguments advanced are relating to appreciation of evidence. Second Appeal is dismissed. Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)