IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1252 OF 2015
WITH
CIVIL APPLICATION NO. 4058 OF 2015

Pravin V. Keniya ... Appellant

vs.

Mulchand R. Saiya ... Respondent

Mr. Piyush M. Shah, Advocate for the appellant.
Mr. Q. M. Ashfaq, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.
Date : 20th April, 2016.

P.C.

1. This first appeal challenges the judgment and decree dated 15th April, 2015, by which Bombay City Civil Court decreed the summary suit for recovery of amount of Rs.7,58,400/- and further interest on the principal amount of Rs.6,00,000/- at the rate of 6% per annum from the date of the suit till realization.

2. The respondent alleged in the plaint that the appellant who was in need of money for the business had approached him for friendly loan of Rs.6,00,000/-. The respondent advanced him that amount on 1st September, 2008. It was agreed between the two that on demand if the appellant did not make the repayment

he will be liable to pay the interest at the rate of 1.1% per month. On the same day a promissory note has been executed by the appellant in favour of the respondent. Later on failure of the appellant to repay the amount, on demand notice dated 3rd April, 2010 came to be served upon the appellant, which subsequently led to the suit.

3. After service of the summons in the suit the appellant appeared before the court to contest the summons for judgment. He was granted unconditional leave to defend the suit. The appellant contended in defence that the respondent is a money-lender, carrying on business of money-lending without a licence and sought dismissal of the suit under Section 10 (1) of the Bombay Money-lending Act, 1946. He alleged that the respondent had filed several summary suits for recovery of amount from different borrowers. He has also filed proceedings under Section 138 of Negotiable Instruments Act in the various Courts of the Metropolitan Magistrate in Mumbai. On merits the appellant denied that he had taken friendly loan from the respondent or executed the promissory note. He alleged that the signature on promissory note is not his signature.

4. Both sides examined themselves in support of their respective case. The trial Court appreciated the oral evidence as

also the documents produced by the respondent. It compared the signature of the appellant in the promissory note with that on the vakalatnama and opined that the signature was same. Thus the evidence before the Court established the friendly loan of Rs.6,00,000/- given by respondent to the appellant. Perusal of the promissory note even by this Court confirms that the signature thereon is same as the signature of the appellant. Therefore, there can be no substance in the allegation of the appellant that the promissory note has not been signed by the appellant. Thus, the claim of the respondent in the summary suit is completely established by the evidence. There is no merit in the challenge to the same.

5. As regards the challenge to the maintenability of the suit on the ground of the respondent being an unlicenced money-lender, there is no evidence on record that the respondent carries on business of money-lending. Hence, there is no merit in this challenge also. The first appeal is therefore dismissed.

6. In view of dismissal of the appeal, Civil Application No.4058 of 2015 does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]