

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

**SECOND APPEAL NO.118 OF 2015
along with
CIVIL APPLICATION NO.240 OF 2015
in
SECOND APPEAL NO.118 OF 2015**

Sindhu Krishna Patil & Ors. .. Appellants

Vs.

Jaysing Ramchandra Patil .. Respondent

Mr.Prashant Kulkarni for the Appellants.

Mr.Nilesh Wable for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 30th August 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellants have impugned the judgment and order dated 1st August 2014 delivered by the learned District Judge-II, Kolhapur dismissing the appeal filed by the appellants. In the said appeal, the appellants had impugned the judgment and decree dated 29th August 2006 passed by the Joint Civil Judge, Senior Division, Kolhapur by which the learned trial Judge had decreed the suit filed by the respondent (original plaintiff).

2. It was the case of the original plaintiff that the plaintiff had advanced a hand loan of Rs.2 lacs for legal necessity to Krushna Rau @ Raghu Patil who executed an agreement recording the terms and conditions of the loan with the plaintiff. Since the defendants failed to repay the said loan of Rs.2 lacs with interest, the plaintiff filed a suit

before the learned trial Judge. The suit was resisted by the defendants on various grounds. Learned trial Judge framed five issues for determination.

3. The plaintiff examined himself and also another witness Mr.Ganpati Patil. The defendants examined the defendant no.1 and another witness Mr.Ashok Khot.

4. The defendants alleged before the learned trial Judge that the person alleged to be the signatory of the loan agreement was not present at the place where the said loan agreement was alleged to have been executed. In support of his submission, the defendants placed reliance on the muster roll of the office showing the presence of the alleged signatory to the agreement. The learned trial Judge disbelieved the muster roll on the ground that there was no signature of the defendant on the said muster roll and only his presence was marked and passed a decree in favour of the plaintiff.

5. Being aggrieved by the judgment and decree dated 29th August 2012 passed by the trial Judge, the defendants filed an appeal (482 of 2012). The appellate Court dismissed the said appeal after framing various points for determination and after considering the arguments and evidence led by both the parties.

6. Learned counsel appearing for the appellants submits that though the appellants had produced the muster roll showing the presence of the defendant when he had alleged to have signed agreement, the trial Judge disbelieved the evidence erroneously. He submits that since the

signature of the defendant was disputed on the loan agreement, the plaintiff ought to have examined the author of the said document.

7. A perusal of the record indicates that the signature of the defendant on the said agreement was admitted by the defendants and there was thus no need to examine the author of the said document. In so far as the reliance placed on the muster roll is concerned, it is not in dispute that the said muster roll was not signed by the defendant but his presence was marked. In my view, the learned trial Judge was right in holding that merely because the presence of the said defendant was marked, that would not prove that he was personally present in the premises of the employer. It is also held that three persons were shown present at the same time without any signatures. In my view, the finding of fact recorded by the learned trial Judge disbelieving the muster roll is not perverse and thus cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908.

8. The appellate Court has also independently considered the oral and documentary evidence led by both the parties and had recorded the finding of fact that the loan was taken by the appellants and had not repaid to the plaintiff. The finding of fact recorded by the appellate Court is also not perverse and thus cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908.

9. No substantial question of law arises in this appeal. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is dismissed. No order

as to costs. In view dismissal of the appeal, the ad-interim order passed by this Court stands vacated.

R.D. DHANUKA, J.