IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.129 OF 2014

Kesharbai Bhimraj Paymode,
Age: 72 years, Occ: Business,
R/o. Majur, Tq. Kopargaon,
Dist. Ahmednagar. ..APPLICANT

VERSUS

Shankar Shriram Chandgude,
Age: 58 years, Occ: Agri.,
R/o. Chas Nali, Tq. Kopargaon,
Dist. Ahmednagar. ..RESPONDENT

Mr S.S. Chapalgaonkar, Advocate for applicant;
Mr S.B. Kadu, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 14th JULY, 2017

ORAL ORDER :

The suit filed by the respondent for recovery being Civil Suit No. 144 of 2005 came to be dismissed on 13th March, 2007 by the judgment and order delivered by Joint Civil Judge, Junior Division, Kopargaon, District Ahmednagar on the ground that the suit was barred by limitation.

2. In Regular Civil Appeal No. 13 of 2011 at the best of respondent, the suit came to be decreed on 16th August, 2013. As such, this is revision application.

3. On 28th March, 2002 the respondent executed receipt i.e. Exhibit-27 depicting hand loan of Rs.15,000/- which was to be paid within four months. As against the claim, notice was issued on 28th February, 2005 at Exhibit-28 and interest was claimed @ 20% p.a. The suit came to be filed on 21st July, 2005, in response to which, the claim to the extent of Rs.10,000/- was admitted. However, same was qualified on the ground that Rs.15,000/- was already paid.

4. The trial Court considering the issue of limitation held that the suit is barred by limitation, whereas the lower appellate Court reverse the findings on the ground that limitation will start running from expiry of four months from the date of execution of receipt at Exhibit-27 i.e.

28th March, 2002.

5. While questioning the finding of lower appellate Court, Mr. Chapalgaonkar, learned Counsel for the applicant would urge that the judgment is not sustainable on two counts; (a) when the contract does not speak of any interest to be paid, the Court ought not to have granted interest @8% p.a. and (b) receipt at Exhibit-27 provides for refund of amount within period of four months. Since no specific period is prescribed in receipt at Exhibit-27 for refund, limitation must start from the date of receipt i.e. 28th March, 2002.

6. Learned Counsel for the respondent opposed the same on the ground that the suit was well within limitation and interest was very much claimed through notice at Exhibit-28.

7. It is required to be noted from the factual matrix and evidence brought on record that receipt at Exhibit-27 speaks of refund of amount

voluntarily by the applicant within four months from the date of execution of receipt. As such, it was incumbent and expected of the applicant to refund the amount of hand loan within four months. In the wake of aforesaid recitals in the receipt, lower appellate Court, in my opinion, has rightly held that limitation shall start from expiry of period of four months from the date of execution of Exhibit-27, which is dated 28th August, 2002. The suit was filed by the respondent for recovery on 21st July, 2005 and as such, lower appellate Court has rightly held that the suit is well within limitation.

8. So far as next contention of present applicant as regards levy of interest is concerned, it is required to be noted that notice Exhibit-28 was issued and admittedly received by the applicant. Said notice speaks of interest @20% p.a. The aforesaid document Exhibit-28 in the backdrop of pleadings, if appreciated and analyzed, as per requirement of Section 34 of the Code of

Civil Procedure, in my opinion, interest @8% awarded by lower appellate Court appears to be reasonable. No case for interference is made out or failure to exercise jurisdiction is noticed. As such, Civil Revision Application fails, stands dismissed.

(N.W. SAMBRE, J.)

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