IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.679 OF 2015
WITH
CIVIL APPLICATION NO.15349 OF 2015

Mauni Agro Chemicals Industries,
A Partnership firm,
(Now it is Mauni Agro Chemicals
Industries Pvt. Limited)
1787, Ashirwad Building, Kopargaon,
Tq. Kopargaon, District Ahmednagar,
Through its authorized Officer,
Dnyaneshwar Shankarrao Dhobale,
Age: 48 years, Occu: Service,
R/o. Gandhinagar, Kopargaon,
Tq. Kopargaon, District Ahmednagar ..APPELLANT
(Orig.Plaintiff)

VERSUS

1. Kishor Madhukar Adkar,
Age: 42 years, Occu: Service,

2. Sau. Jyoti Kishor Adkar,
Age: 39 years, Occu: Household,

Both R/o. A/9/6, Rajsarthi Housing
Society, Indiranagar, Nashik,
District Nashik ..RESPONDENTS
(Orig.defts)

Mr A. V. Hon, Advocate for appellant;
Mr S. G. Chapalgaonkar, Advocate for respondents

CORAM : NITIN W. SAMBRE, J.

DATE : 6th November, 2017

ORAL ORDER

Appellant-plaintiff instituted Special Civil Suit No.30 of 1994 for recovery of amount of Rs.3,03,989.14 ps. Appellant, a registered partnership firm, had appointed respondent no.1-defendant no.1 as its

Manager and it is claimed that by misusing said position, respondent no.1 has withdrawn the amount through self cheques, from the account of the firm, to which he is liable.

2. The aforesaid claim in the suit was resisted by defendant no.1 by filing written statement at Exh.39. He denied the status of the firm as a registered partnership firm and further claimed that the suit is filed so as to target him out of employer-employee relationship.

3. So far as respondent no.2-defendant no.2 is concerned, she filed written statement at Exh.41 and denied the claim.

4. The Trial Court, after framing issues at Exh.43, which were subsequently recast, recorded finding that the appellant is a registered partnership firm and suit at its behest is maintainable. The Trial Court, after appreciating evidence of the witness of the plaintiff, namely, Daulatrav Chauhan, who has stated that defendant no.1 has taken away records of the said firm and has also withdrawn the amount, decreed the suit vide judgment and order dated 5th July, 2003.

5. Respondent No.1- Defendant No.1, feeling aggrieved by the aforesaid judgment and decree, preferred Regular Civil Appeal No.48 of 2012 before learned District Judge, Kopargaon, which came to be allowed on 22nd March, 2012. Thus, the present second appeal.

6. While trying to pursue this Court to frame a substantial question of law, learned Counsel appearing on behalf of appellant would urge that once the Trial Court has reached to the conclusion that respondent No.1-defendant No.1 has withdrawn the amount as claimed in the suit, withdrawal of account books of the said period from the custody of the firm, the lower appellate Court ought not to have simplicitor reversed findings merely for asking, just because a contrary view is possible.

7. While opposing the aforesaid claim, learned Counsel appearing on behalf of respondents – defendants would urge that the appeal lacks merit, as the appellate Court, after appreciating the pleadings and oral evidence, by a well reasoned judgment, has recorded finding that the liability against respondent No.1 was not established. He would try to take me through the pleadings and evidence of the respective parties in support thereof.

8. It is required to be noted from the findings recorded by the lower appellate Court that for reversing the finding of the Trial Court of decreeing the suit, it noted that such liability as has been alleged by appellant-plaintiff could have been established through copy of balance-sheet of the relevant financial year submitted to the Income Tax Department.

9. Though the cheques in question against which cash withdrawals was made are at Exhs.118 to 141, depicting withdrawal of amount of Rs.2,34,700/-, so as to establish the claim, the plaintiff has examined

P.W.1 Daulatrav Chauhan in support of his claim. However, the lower appellate Court noted that such withdrawal of amount from the account of the firm was not properly established by the appellant-plaintiff.

10. The appellate Court noticed that even assuming that the account books of relevant years were not available, still the fact remains that the liability of respondent No.1 could have been established from the balance-sheet and income tax returns.

11. The lower appellate Court went on drawing the inference that in absence of production of balance-sheet and income tax returns, it cannot be borne out from oral evidence that there is liability on respondent No.1 to pay an amount of Rs.2,34,700/-, together with interest.

12. The view expressed by the lower appellate Court is based on appreciation of pleading and evidence of the parties. It was expected of the appellant to establish its claim being a registered partnership firm from the record maintained by it and not by giving an excuse that the record was removed by respondent No.1-defendant No.1. The present appellant is presumed to be custodian of balance-sheet and income-tax record which could have been formed to be basis for establishing liability of respondent no.1-defendant no.1. In view thereof, the view expressed by the first appellate court is a possible view. The appeal lacks merit and stands dismissed.

13. In view of dismissal of appeal, Civil Application No.15349 of 2015 does not survive and stands disposed of accordingly.

(NITIN W. SAMBRE, J.)

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