

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

**SECOND APPEAL NO. 889 OF 2015
WITH
CIVIL APPLICATION NO. 1948 OF 2015**

Gurupad Ishwar Hampannawar	...	Appellant
V/s.		
Mangesh Dattatraya Sarvekar	...	Respondent

- Mr.Sudhir V. Sadavarte for the Appellant.
- Mr.A.S. Khandeparkar a/w. Ms.Apoorva Khandeparkar i/b. Khandeparkar & Associates for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JUNE, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent.

2] This Second Appeal is preferred against the judgment and decree dated 29/04/2015 passed by the Principal District Judge, Sindhudurg at Oros in Regular Civil Appeal No.118 of 2013, thereby allowing the said appeal and setting aside the judgment and decree dated 28/09/2011 passed by the Court of Jt.Civil Judge, Senior Division, Sindhudurg at Oros in Special Civil Suit No.16 of 2002.

3] The said suit was filed by the Appellant herein for recovery of the amount of Rs.4,99,000/- with interest thereon at the rate of 18% per annum.

4] As per the case of the Appellant, Respondent was his student and for purchasing Tata Sumo, Respondent has borrowed the amount of Rs.4,99,000/- from him on 17/10/2001 by executing a bond therefor. The Respondent has agreed to repay the borrowed amount on 25/11/2001. However, as he failed to do so, the Appellant had filed the suit for recovery of the said amount with interest.

5] This suit was resisted by the Respondent, denying execution of the bond and also denying that he was in need of money for purchasing the Tata Sumo. It was specifically contended by the Respondent that for purchase of Tata Sumo, he has borrowed the loan from Bhudargad Nagari Sahakari Patsanstha Gargoti, Branch Phondaghat, District Sindhudurg and some amount was borrowed in the name of his wife from Sindhudurg Zilla Primary Teachers' Co-operative Society, Kudal. It was submitted that, totally a false suit is filed and therefore, it is liable to be dismissed.

6] In support of his case, the Appellant examined himself but failed to examine the attesting witness to the bond, namely, Vishnu

Madhav (D.W.2). The said witness was examined by the Respondent and he has denied that the bond was executed in his presence.

7] The trial Court has, however, relied upon the opinion of the Handwriting Expert and drew the adverse inference and then on the basis of some admissions given by the attesting witness in his cross-examination, decreed the suit partly for the entire amount but reduced the rate of interest upto 8% per annum.

8] When this judgment was challenged before the Appellate Court, in my considered opinion, the Appellate Court has rightly held that the contents of the document alleged to be executed by the Respondent clearly goes to prove that it falls under the definition of the “bond” as given under Section 2(c)(ii) of the Bombay Stamps Act, 1958 and for proving the said bond, the evidence of attesting witness was crucial. Here, in the case, however, the Appellant has failed to examine the attesting witness Vishnu Madhav in whose presence, according to him, the bond was executed by the Respondent. The said witness is examined by the Respondent and he has denied the execution of the bond in his presence. As observed by the Appellate Court, the remedy was in such situation available to the Appellant to examine Advocate Mr.Bhandarkar, who has written the contents of the said bond. The Appellant has, however, categorically deposed in

his cross-examination that he was not going to examine Advocate Mr.Bhandarkar. In such situation, the contents of the bond are not proved, as required under Section 68 of the Indian Evidence Act, 1872.

9] Even the evidence of the Appellant also does not prove that the Respondent and the attesting witness have signed on the bond in presence of each other. He has also not deposed that the contents of the bond were written by Advocate Mr.Bhandarkar as per the instructions of the Respondent.

10] In such situation, the Appellate Court has rightly held that, when the execution of the bond is not proved, merely on the basis of some adverse interference, the liability cannot be fastened on the Respondent of paying the said amount. The judgment of the Appellate Court is based on proper appreciation of evidence on record. No substantial question of law is involved in the appeal. Hence, the Second Appeal stands dismissed.

11] In view of dismissal of the Second Appeal, nothing survives in the Civil Application and therefore, it also stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]