

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.688 OF 2017

Wamanrao Naraynarao Nirmal

-vs-

Gajanan Ramchandra Naik (Deceased) Th. LRs. Sharda Gajananrao Naik and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. C. Dharmadhikari, Advocate for appellant.
Shri N. A. Vyawahare, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : June 25, 2018

Heard.

The appellant is the original plaintiff who has filed suit for recovery of an amount of Rs.3,06,000/- with interest from the defendants. It is the case of the plaintiff that he along with defendant Nos.1 and 2 invested an amount of Rs.2,00,000/- each and started a travel agency from 25/08/2004. The said business was conducted for some period. Thereafter the plaintiff intended to leave the firm and hence sought return of the amount invested. This request was refused by the defendants. The plaintiff therefore filed suit for recovery of the aforesaid amount. The trial Court dismissed the suit holding that misuse of the vehicles as

alleged had not been proved by the plaintiff. The appellate Court confirmed that decree on the ground that the notice as required to be given as per Clause-6(c) of the Partnership Deed had not been so given.

It is submitted by the learned counsel for the appellant that even if such notice as contemplated by Clause-6(c) of the Partnership Deed was not given, the plaintiff was entitled to receive the refund. Though there was exchange of communications between the parties, the said amount had been withheld without any legal justification. It is therefore submitted that the decree ought to have been passed and the plaintiff ought to be refunded the amount.

It is submitted by the learned counsel for respondent No.2 that as agreed between the parties, issuance of such notice was mandatory. In absence of any such notice no relief could be granted to the plaintiff.

After hearing learned counsel for the parties it is

seen that the appellate Court has found that as stipulated by Clause-6(c) of the Partnership Deed, no notice was given by the plaintiff seeking refund of the invested amount. Admittedly the firm in question is not registered and there is no prayer for dissolution of such firm. The profit and loss in the business was to be shared equally. Thus in absence of the notice as contemplated by Clause-6(c), no error is found in judgment of the appellate Court when it dismissed the appeal filed by the plaintiff.

No substantial question of law arises for consideration. The Second Appeal is therefore dismissed. No costs.

JUDGE