IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

914 SECOND APPEAL NO.790 OF 2018

USHA BAJIRAO JADHAV
VERSUS
DADA @ LAKHAN SUGRIV KAWADE

...
Advocate for Appellant : Mr.S.V.Suryawanshi
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CORAM : V.L.ACHLIYA,J.
DATE : 24.09.2019

PER COURT:

1] Being aggrieved by the concurrent decisions rendered by the Courts below, the appellant-original plaintiff has preferred this Appeal.

2] Heard the learned counsel for the appellant. Perused the impugned judgment and order passed by the trial Court and confirmed in Appeal.

3] In brief, it is the contention of the learned counsel for the appellant that the Courts below erred in dismissing the suit. It is contended that the Courts below failed to consider the presumption u/s. 118 of the Negotiable Instrument Act as to issuance of cheque for consideration.

4] The appellant – plaintiff has approached with the case that the respondent – defendant was having tractor. He had no equipments attached for the use of the tractor for using for agricultural operation. The plaintiff agreed to invest Rs.80,000/- in the business to be used for purchasing equipments. They decided to carry business in partnership. With the investment made by the plaintiff, equipments were purchased. Subsequently as it was not feasible for the appellant–plaintiff to continue to carry business in partnership, she requested defendant–respondent to return the amount invested by her in the business. Towards refund of invested amount, the defendant issued cheque of sum of Rs.80,000/- drawn on from his account with Janata Sahakari Bank Ltd. Washi payable in favour of the plaintiff. Cheque issued by the plaintiff was lost during transit by Banker i.e. the State Bank of Maharashtra. The plaintiff filed proceedings under the provisions of the Consumer Protection Act seeking compensation against Bank towards loss of cheque. In the proceeding, the Bank has accepted that the cheque was lost at their level during transit. The compensation of Rs.5,000/- was awarded by the Consumer Forum in favour of the plaintiff. The plaintiff filed suit seeking recovery of amount of Rs.80,000/- based upon the cheque alleged to have been issued by the defendant. The defendant appeared in the matter and denied the case of the plaintiff in *toto*. The defendant has specifically denied that the amount of Rs.80,000/- was given for the purchase of equipments for running the business with defendant. The defendant has specifically denied the issuance of cheque as well as loss of cheque by the banker.

5] In order to prove her case, the plaintiff has stepped into witness box. Since the cheque alleged to have been issued by the defendant was lost, the plaintiff could not produce the same. The trial Court has dismissed the suit by holding that the plaintiff has failed to prove investment of Rs.80,000/- in the business of defendant. It is further held that the plaintiff has failed to prove that the defendant has issued cheque bearing No.462611 in favour of the plaintiff in discharge of the legal liability or debt. In Appeal, the Appellate Court has confirmed the judgment and decree passed by the trial Court. Being aggrieved, the present Appellant has preferred this Appeal.

6] In my view, the reasons and findings recorded by the Courts below are quite consistent with the pleadings and evidence adduced in the case. In absence of proof of issuance of cheque by defendant, no presumption u/s. 118 of the Negotiable Instrument Act can be drawn that cheque was issued and same was issued by defendant for consideration. There is no perversity in reasons and findings recorded by the Courts below. Appeal raises no substantial questions of law. In absence of substantial questions of law involved in appeal and the decisions rendered by the Courts below are concurrent decisions, I am not inclined to admit Appeal. Accordingly, the Appeal is dismissed.

[V.L.ACHLIYA]
JUDGE

DDC