

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

SECOND APPEAL NO.153 OF 2019

Pravin s/o Sukhdeo Ghatol.

Vs.

Premraj s/o Gangaram Kanojiya.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. R. Agrawal, Advocate for appellant.
Mr. B. N. Mohta, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 07, 2020.

Heard Mr. P. R. Agrawal, learned counsel for the appellant and Mr. B. N. Mohta, learned counsel for the respondent.

2. A suit for recovery was filed by the original plaintiff for a sum of Rs.1,82,000/-, on the ground that against a loan of Rs.3,32,000/-, out of which Rs.3,00,000/- were paid on 07.08.2010, Rs.20,000/- were paid on 03.11.2010 and Rs.12,000/- were paid on 29.11.2010, a repayment of Rs.1,50,000/- was done by way of a cheque, leaving a balance of Rs.1,82,000/-. It was the defence of the defendant, that there was no transaction & in fact it was stated that Rs.3,00,000/- were in fact received by the defendant, from the plaintiff, against the pre-existing liability and, therefore, there was no question of any repayment. It was further contended that the cheque of Rs.1,50,000/-, was not from the account of

the defendant, but was from the account of one Quazi Gyasuddin who had no connection with the defendant. The plaintiff examined himself and one Ravindra Lohiya Bank Officer as PW-2. On behalf of the defendant, one Sanatan Ingole, Bank Officer was examined. It is pertinent to note that the defendant did not enter into the witness box.

3. The learned Trial Court after assimilating the documents and evidence led, passed a decree in favour of the plaintiff.

4. The Appellate Court confirmed the findings of the learned Trial Court, being aggrieved, by which the original defendant has filed present appeal.

5. Mr. Agrawal, learned counsel for the appellant submits that no amount of loan was taken by the defendant, in fact, the amount of Rs.3,00,000/- was received by the plaintiff from the defendant against a pre-existing liability. He further submits that the payment of Rs.1,50,000/- cannot be linked to the defendant, as the cheque was not issued from the account of the defendant and therefore could not have formed the basis for the finding by the learned Trial Court. He therefore submits that the Courts below have erred in passing a decree in favour the plaintiff, as there was no evidence at all on record.

6. Mr. Mohta, learned counsel opposing the same supports the judgment of the Courts below.

7. A perusal of the written statement of the defendant / appellant, demonstrates that, he had categorically admitted receipt of a sum of Rs.3,00,000/- from the plaintiff by way of cheque No. 3084154 dated 07.08.2010 drawn on the Agrasen Nagari Sahakari Bank Ltd. Akola. He further admitted that later on 03.11.2010 and 29.11.2010 the amount of Rs.32,000/- was given to the defendant. This admission is contained in Para 1 of the written statement. The defence raised was that this amount was received by the defendant from the plaintiff against a pre-existing liability, however, what that pre-existing liability was, has not been disclosed. That apart, the defendant himself did not enter into the witness box to demonstrate the nature of the pre-existing liability alleged. The issuance of cheque of Rs.1,50,000/- by one Quazi Gyasuddin, has been related to the liability of repayment of Rs.3,32,000/- and upon deduction of the same balance of Rs.1,82,000/- has been arise. If the same is not taken into consideration, then the liability would be the entire amount of Rs.3,32,000/-.

8. Mr. Mohta, learned counsel for the respondent / plaintiff submits that he is bound by the admission of receipt of Rs.1,50,000/- as against the liability of Rs.3,32,000/-, in light of which statement, the decree for the balance has rightly

been passed.

9. Mr. Agrawal, learned counsel for the appellant then attacks the findings rendered by the Appellate Court, that in view of the earlier decision in RCA No.142 of 2015, dated 23.11.2016 passed by the District Judge, Akola, between the same parties, challenging the judgment of the Trial Court, the findings rendered therein, would operate as *res judicata* in the appeal before the First Appellate Court in RCA No.35 of 2018. The findings of *res judicata*, by the Appellate Court cannot be faulted with for the reason that in RCA No.142 of 2015, which challenges the same judgment dated 30.09.2015, by the Trial Court in RCS No.47 of 2012, the same parties, the same subject matter, was in issue. That being the position there is no substantial question of law involved in the present appeal. The same accordingly dismissed. In the circumstances, there shall be no order as to costs.

JUDGE