

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 SECOND APPEAL NO.143 OF 2021

Dr. Rishabh Subha Firodiya
Age: 43 years, Occu: Medical Practitioner,
R/o Plot No.4, Arihant,
Near Anand Rushi Hospital,
Station Road, Ahmednagar.

... Appellant
(Orig. Plaintiff)

Versus

Rohit Mohan Pardeshi
Age: 38 years, Occu: Business,
R/o 1542, Ramchandra Khunt,
Kings Road, Ahmednagar

... Respondent
(Orig. Defendant)

...

Advocate for the Appellant: Mr. L. B. Palod

...

CORAM : AVINASH G. GHAROTE, J.

DATE : 17th June, 2021

ORAL JUDGMENT :

. Heard Mr. Palod, learned counsel for the appellant. The present appeal challenges the concurrent finding of fact rendered by the courts below to the effect, that the plaintiff/appellant, had failed to prove the document, which according to him, was a promissory note, executed by the defendant in his favour on

01.04.2009, on the basis of which it was contended, that the hand-loan of Rs.2,25,000/- was taken by the defendant from the plaintiff, for repayment of which, the said promissory note, was claimed to have been executed. Both the courts below have found, that the execution of the promissory note, has not been proved by the plaintiff/appellant. Another document, namely, a cheque claimed to have been issued by the defendant in favour of the plaintiff, has also been denied by the defendant to have been signed or issued.

2. Learned counsel Mr. Palod for the appellant, has taken me through the evidence of the defendant which was placed on record, to contend, that the defendant had made contradictory pleadings and the denial was improper. He further submits, that under the provisions of the Negotiable Instrument Act, a presumption arises once a cheque has been issued.

3. He further submits, that if it all the learned trial court had come to the conclusion, that the document in question was not a promissory note, but was a bond, it could have invoked the provisions of the Maharashtra Stamp Act and impounded the

document and not doing so, vitiates the trial. He further submits, that evidence has been led by the defendant which is beyond the pleadings.

4. A perusal of the document styled as promissory note, which is reproduced at Paragraph No.28 of the Judgment of the trial court indicates, that it is a document which is witnessed by two witnesses. It is an admitted position, as reflected from Paragraph No.34 of the judgment that the appellant/plaintiff had not examined either the scribe or the two witnesses to the said document, as a result of which the document was not exhibited as the same was not proved, as required by law. That being the position, the plea based upon the alleged promissory note, did not survive at all and any exercise by the learned trial court to delve into the document to hold that the same was a bond, was totally futile in view of the finding rendered that the document was not proved. For this reason also the issue of impounding is not germane, though the court could have directed impounding. So also the plea that the defendant led evidence beyond pleading is of no assistance as it was for the plaintiff to discharge the initial burden by proving the document which he failed to do.

5. That left the plaintiff, with the cheque, alleged to have been issued by the defendant in his favour, the signature upon which or its execution, had been denied by the defendant, as is reflected from his evidence at Exhibit-33. Thus, the cheque also has not been proved as required by law.

6. Mr. Palod learned counsel for the appellant, invites my attention to Section 67 of the Evidence Act, to contend that in view of the language of the same, the cheque ought to have been held to have been proved. Section 67 deals with proof of signature and handwriting of a person and indicates, that the signature and handwriting of such person on the document ought to be proved. In the instant matter, no such attempt appears to have been done by the plaintiff/appellant.

7. Insofar as the plea about presumption under the provision of Section 141 of the Negotiable Instrument Act is concerned, the same would clearly be available in the proceeding under Section 138 of the Negotiable Instrument Act and not otherwise. Both the courts therefore, have correctly appreciated the facts as well as the law. In my humble opinion, no substantial

question of law arises. There, is therefore, no merit in the appeal and the appeal is accordingly dismissed.

(AVINASH G. GHAROTE, J.)

Sameer