

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 643 OF 2019
WITH
CIVIL APPLICATION NO. 14450 OF 2019
IN SA/643/2019**

- | | | | |
|----|------------------------------------|---|---|
| 1. | Rajeshree W/o Rajendra Gilda |] | |
| | Age : 50 Years, Occu : Household |] | |
| 2. | Abhay S/o Rajendra Gilda |] | |
| | Age : 28 Years, Occu : Education |] | |
| 3. | Ankit S/o Rajendra Gilda, |] | |
| | Age : 22 Years, Occu : Business |] | |
| | All R/o Near Balaji Mandir, Latur. |] | |
| | Tq. and Dist. Latur |] | ... Appellants
(Orig. Defendants) |

Versus

- | | | | |
|--|-------------------------------------|---|--|
| | Kantadevi W/o Nandkishor Soni, |] | |
| | Age : 55 Years, Occu : Household, |] | |
| | R/o Moti Nagar, Latur, Dist. Latur. |] | ... Respondent
(Orig. Plaintiff) |

. . .
Mrs. Anjali Dube (Bajpai), Advocate for the Appellants.
Mr. Vijay B. Patil, Advocate for the sole Respondent.
. . .

CORAM : MANGESH S. PATIL, J.

**RESERVED ON : 22 APRIL 2022
PRONOUNCED ON : 04 MAY 2022**

JUDGMENT :

. Heard the learned advocate of both the sides on the point of admission.

2. The original defendants are in second appeal, being aggrieved and dissatisfied by the judgment and decree passed by the trial court, holding them liable to pay to the respondent/plaintiff a sum of Rs.4,78,500/- together with future interest at the rate of 6% per annum from the date of the suit i.e. 30-01-2014 and the dismissal of their appeal by the District Court.

3. Deceased Rajendra was the husband of the appellant no.1 and father of other two appellants. He borrowed Rs.4 lakh as a handloan from the respondent and agreed to return it within a month. He failed to repay. The respondent raised demand with Rajendra. He issued couple of cheques drawn on his banker for Rs.2 lakh each payable on 17-01-2013 and 20-01-2013. The cheques were presented for encashment on 08-04-2013, but were dishonoured and returned to her on 16-04-2013. A statutory notice for initiating a proceeding under section 138 of the Negotiable Instruments Act, 1881 was sent to him. He received it. Unfortunately, Rajendra died in a road accident on 30-04-2013. A fresh notice was served to the appellants, but they did not respond and the suit was instituted.

4. The appellants contested the suit by their written statement. They denied Rajendra having obtained handloan from the respondent or to have issued any cheque. They also denied about he having received any notice and prayed to dismiss. The trial court conducted hearing and decreed the suit.

5. The lower appellate court concurred with the finding of facts recorded by the trial court and dismissed the appeal by the judgment and order under challenge.

6. The main bone of contention of learned advocate Mrs. Dube for the appellants has been on sub-section 4 of section 6 of the Hindu Succession Act, 1956 which came into force with effect from 09-09-2005, which declares the concept of pious obligation would only apply to the debts incurred by the deceased father and the stipulated heirs are not liable for recovery of any debt incurred by the ancestor after coming into force of the Act on 09-09-2005. She would submit that admittedly, deceased Rajendra had incurred the debt after 09-09-2005 and the appellants being the heirs would be under no legal obligation to discharge it. In support of her submissions she would place reliance on a decision in the matter of **Sri. Solairaj Vs. Smt.Vijayarani** in **Civil Revision Petition No. 575 of 2018** of the Madras High Court, dated 19-07-2018.

7. Learned advocate Mrs. Dube would submit that the trial court did not address a similar argument advanced before it, whereas the district court has turned it down. The issue gives rise to a substantial question of law and the second appeal be admitted.

8. Learned advocate Mr. Patil for the respondent would submit that

so far as liability and its proof is concerned, both the courts below have concurrently recorded a finding about the debt having been proved and this court in second appeal cannot exercise the jurisdiction when the concurrent conclusions are based on reasonable appreciation of evidence.

9. Learned advocate Mr. Patil would further submit that though sub-section 4 of section 6 of the Hindu Succession Act, specifically declares the heirs not to be liable to pay the debt under the concept of pious obligation which have been incurred after 09-09-2005, it was sufficiently brought in evidence as pointed out by the district court that the appellants have inherited an immovable property with a water purification plant and therefore, the appellants are liable to pay the debt from an out of the estate inherited by them. The district court has rightly referred to such evidence while holding that they are not entitled to reap any benefit from that provision.

10. I have carefully considered the rival submissions and perused the record and proceeding.

11. So far as the debt is concerned, both the courts below, on the basis of reasonable appreciation of evidence on the record have reached a concurrent conclusion about deceased Rajendra having borrowed a sum of Rs. 4 lakh from the respondent. Since this is a concurrent finding, in view of the inherent limitations on the powers of this court under section 100 of the Code

of Civil Procedure, as laid down in the decisions in the matters of **Hero Vinoth (minor) Vs. Seshammal; (2006) 5 SCC 545**, para 19 and **Narayanan Rajendran and Ors. Vs. Lekshmy Sarojini and Ors.; (2009) 5 SCC 264**, para 64, and **Damodar Lal Vs. Sohan Devi and Ors.; AIR 2016 Supreme Court 262**, the powers of this court to undertake a fresh scrutiny of evidence are very limited and the present matter does not warrant any such exercise. Such concurrent finding of fact does not give rise to any substantial question of law. The paragraph Nos. 19 and 64 read as under :-

“19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.”

(Hero Vinoth Supra)

“64. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is

permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the Section is that the appeal shall be heard only on that question."

(Narayanan Rajendran Supra).

12. This takes me to the legal ground being agitated by the appellants regarding applicability of section 6(4) of the Hindu Succession Act.

13. Admittedly, deceased Rajendra had borrowed money after coming into force of the amendment to the Hindu Succession Act with effect from 09-09-2005. A reading of the provision clearly indicates that the stipulated heirs have been exempt from any liability incurred by their stipulated forefather, if the latter had incurred the debt after 09-09-2005. It clearly reads that deviating from the ancient Hindu Law, it has further been declared that such heirs would not be liable under the concept of pious obligation. Therefore, there cannot be any debate as far as the scope of that provision is concerned.

14. However, as has been rightly submitted by advocate Mr. Patil and though the learned Judge of the district court has not expressed the view in so many words, the provision will have to be understood with the common law principle under which a person inheriting an estate would be under legal and moral obligation to discharge the liabilities incurred by the person from whom the estate is inherited. It cannot be comprehended that the legislature had intended this provision to be used as a defence by the heirs as a blanket protection. If at all the deceased has left some assets and his heirs inherit those, the assets would come with whatever liabilities the deceased had. If this provision is to be interpreted to mean that the heirs in spite of inheriting assets are not liable to pay the debts of their predecessor, it would result into drastic consequences as creditors would be left in lurch, if they are unable to get back their money during the lifetime of the debtor. Precisely, for this reason, a harmonious construction will have to be placed while understanding the scope of the protection to which heirs are entitled under section 6(4) of the Hindu Succession Act. It would apply only where they do not receive any asset from their predecessor and receive only the liabilities incurred by him after 09-09-2005. This must have been the intention of the legislature.

15. It is not the case of the appellants either in their written statement or even thereafter that they had not received any estate or asset from the deceased Rajendra. It has been pointed out by the district court on

the basis of the evidence that land gut no. 516 admeasuring 97 Are was standing in the name of deceased Rajendra as the exclusive owner and on which property a water purification plant was in operation, albeit, he had borrowed some loan from a bank as well. Admittedly, the appellants are the only heirs of deceased Rajendra and must have inherited this property. If this is so, when the appellants have received the estate of deceased Rajendra with open hands, they are not legally entitled to take shelter of section 6(4) of the Hindu Succession Act.

16. The decision in the matter of **Smt.Vijayarani** (supra), in my considered view, does not take into consideration a situation where the heirs inherit some estate of their predecessor.

17. In view of the above discussion, though the debt was incurred by deceased Rajendra after 09.09.2005, since the appellants have succeeded to his estate as described hereinabove, they are not entitled to any protection under section 6(4) of the Hindu succession Act. No substantial question of law arises in this second appeal.

18. The second appeal is dismissed with costs.

19. Pending civil application is disposed of.

(MANGESH S. PATIL, J.)