

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

**SECOND APPEAL NO.306 OF 2023
WITH
CIVIL APPLICATION NO.7284 OF 2023**

- . Sau. Shailaja Ramesh Sawai,
Age: 55 years, Occu.: Household,
R/o. Mayur Apartment,
Dindayal Road, Dombivali (West),
Dist. Thane
Through G.P.A.
Sunil Ramesh Sawai,
Age: 50 years,
R/o. As above
- .. Appellant
(Org. Defendant)**

Versus

- . Shrinivas Govind Rahurikar,
Age: 35 years, Occu.: Nil,
R/o. Dnyaneshwari, Ganeshnagar,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar
- .. Respondent
(Org. Plaintiff)**

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Advocate for Appellant:
Mr. Anil S. Bajaj a/w. Mr. R. S. Wani

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**CORAM: ARUN R. PEDNEKER, J.
DATE: 13.07.2023**

ORDER:

1. By the present second appeal, the appellant is challenging the order passed by the appellate court dated 07.01.2023, upholding the order dated 17.04.2006, of the Joint Civil Judge

Junior Division, Sangamner, District Ahmednagar in Regular Civil Suit No.532 of 2000 (old Regular Civil Suit No.82 of 1985), whereby the trial court had decreed the suit with costs and directed the defendant (appellant herein) to pay Rs.30,000/- to the plaintiff with interest at the rate of 12% per annum from the date of suit till making payment of the entire amount due.

Brief Facts:-

2. It is the case of the plaintiff that he handed over hand loan in sum of Rs.30,000/- by two cheques of Rs.20,000/- and Rs.10,000/- to his sister. He had taken the money from his friend Mr. Kumar Teumal Lakhavani and had paid it to his sister, as the sister was in need of money. The plaintiff, thereafter, repaid the said amount to Mr. Kumar Teumal Lakhavani from his own funds. The plaintiff asked his sister / defendant to return the money, when the defendant failed to return the money plaintiff issued notice to the defendant dated 06.05.1985. The defendant failed to pay the

amount, thus the plaintiff filed the suit for recovery of the amount.

3. The defendant resisted the suit by filing a written statement. It is contended by the defendant that her husband purchased a house property bearing Municipal no.2221, at Sangamner, from her brother / plaintiff Shrinivas for Rs.50,000/-. It is further contended by the defendant that there were two tenants kept in the said house property at Sangamner and the plaintiff was collecting the rent on behalf of the defendant's husband and was paying the municipal taxes in respect of the said property regularly. The money was accumulated in the hands of the plaintiff and, thus, the plaintiff by way of two cheques paid the said accumulated amount to the defendant. As such, the defendant is not liable to repay the amount to the plaintiff. The trial court as well as the appellate court on consideration of the material held that the defendant owed Rs.30,000/- to the plaintiff. It was further held

that the amount / cheque paid to the defendant was not towards rent and the defense of rent is taken up as an after thought. The appellate court confirmed the decree passed by the trial court. The orders passed by both the courts below is challenged in the present second appeal.

4. Mr. Anil S. Bajaj along with Mr. R. S. Wani, learned counsel for the appellant submits that the evidence of DW-3 was not considered by both the courts below and, as such, the courts have rendered an incorrect finding of fact and that this gives rise to the substantial question of law in the present second appeal.

5. On perusal of the appellate court judgment it could be noticed that the defendant's claim is that the plaintiff received rent of property of defendant for the year 1978 up to 1980 and that the plaintiff was looking up the dilapidated house of the appellant / defendant and that he was paying municipal taxes for the same. As per the evidence of DW-3, who was one of the

tenants in the defendant's house, he had paid Rs.150/- and, thereafter, Rs.200/- as rent to the plaintiff. It is also the case of the appellant / defendant that the municipal taxes of the house were paid by the plaintiff. The courts below, on the basis of evidence of plaintiff and the defence evidence held that the defence claim is not substantiated by her reply given to the legal notice of the plaintiff and that the defendant has put up a claim of accumulation of rent amount in the hands of plaintiff as an after thought. Even, perusal of evidence of DW-3 would show that the the payment of rent for a period of 2 years would not run more than Rs.5,000/-, whereas the payment received by the defendant from the plaintiff is of Rs.30,000/-. The amounts of rent claimed is from 1978 up to 1980, whereas, the payments / hand loan is advance to the payment are of the year 1984 – 1985.

6. In the circumstances, it cannot be said that the court has not examined the evidence of

the defendant. The court below has rendered finding, on consideration of the evidence of both the parties, so also, if I individually look at evidence of DW-3, the defendant's case is not at all fully substantiated by DW-3.

7. In view of the same, no substantial question of law arises for consideration and the second appeal is dismissed. The pending civil application is also disposed of.

[ARUN R. PEDNEKER, J.]

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