

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

SECOND APPEAL NO.113 OF 2021

**ATIYA SULTANA MEER ASHEQ ALI
VERSUS
MIR TANVEER JAVED ALI MEER TURAB ALI**

Mr. S. S. Kazi, Advocate for the appellant
Mr. S. S. Naik, Advocate h/f Mr. M. K. Deshpande, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 3rd APRIL, 2023

P.C. :-

1. Heard.
2. This second appeal filed under Section 100 of Code of Civil Procedure takes exception to the judgment and order passed by District Judge-2, Aurangabad dated 12/021/2020 in Regular Civil Appeal No. 79/2011 and judgment and order dated 26/11/2010 passed by Civil Judge, (J.D.), Aurangabad in Reg. Civil Suit No. 721/2008 whereby the suit filed by plaintiff for recovery of money is decreed.
3. In short case of the plaintiff and defendant can be narrated as follows:

Plaintiff has filed suit against the defendant for recovery of sum of Rs.50,000/- with the contention that the defendant is his

maternal aunt and since she was in need of money, she asked for hand loan of Rs.50,000/-. It is further averred that it was agreed between the parties that the loan amount would be returned after one year. Plaintiff thereafter sought return of the said amount which was refused by the defendant and hence the suit came to be filed.

4. Defendant filed her written statement and denied to have obtained any hand loan from the plaintiff. It is her contention that the cheque of Rs.50,000/- was issued by the plaintiff to her towards the dues payable to her deceased husband from the transaction of the family property. She has further denied her liability to pay any amount to the plaintiff.

5. Learned counsel for the appellant/defendant states that the learned First Appellate Court has committed error by not framing all points for determination as contemplated by Order 41 Rule 31 of the Code of Civil Procedure and that in a cryptic manner the appeal has been disposed of. He also took exception to the judgment of the Trial Court by stating that the evidence on record has not been considered in right perspective.

6. According to him the suit is barred by limitation in view of the fact that from the date of issuance of cheque and realization of the

amount the suit has not been filed within three years. To support his contention apart from Article 20 of Limitation Act, he placed reliance on the judgments in case of ***Babu Manmohan Das Versus Baldeo Narain Tandon, AIR (PC) 1938 066*** and ***B. Sangarmal Sowcar V. K. Murugesu Naicker, AIR 1964 Madras 77.***

7. On the other hand, learned counsel for the respondent/plaintiff supported the impugned judgments and decrees with the contention that as per the plaint and the evidence of the plaintiff there was an agreement between the parties for repayment of the loan after period of one year and thus cause of action accord for plaintiff only after the refusal on the part of the defendant to pay the amount, the suit has been filed within the period of limitation.

8. At the outset this Court would like to deal with the contention with regard to the First Appellate Court not taking into consideration the entire facts on the record and without framing of points for determination the appeal has been dismissed. Perusal of the judgment, in particular paragraph 12, indicates that the First Appellate Court has taken into consideration the evidence on the record and it is observed that the date of advancement of loan is 24/12/2004 and the loan amount was to be returned by 24/12/2005 and in view of the same the suit filed on 07/08/2008 is well within a period of limitation. The said observations

clearly shows that the evidence on record is fully considered before making such observations. Length of reasoning is immaterial and what is relevant is reasons as recorded are in confirmity with evidence on record. The judgment of First Appellate Court satisfies said requirement.

9. With regard to the findings recorded by the learned Trial Court about the advancement of loan by the plaintiff the reliance can be placed on the testimony of the plaintiff wherein he has specifically stated about defendant seeking hand loan from him of Rs.50,000/- and agreed to repay the amount within a year. During the cross-examination no doubt it is suggested to this witness that there was no written contract to that effect nor the amount was paid in presence of any witness. However, while considering this admission one cannot ignore the close relationship between the parties. Defendant is the maternal aunt of the plaintiff and having regard to the said relationship lack of written agreement or even non availability of any independent witness to transaction could not become fatal to the case of the plaintiff. This is so, particularly in view of the fact that receipt of Rs.50,000/- by cheque is not denied but loan transaction is not accepted.

10. It is material to take note of the fact that defendant has come out with the case that in respect of the properties of family certain transactions were done and an amount of Rs.50,000/- was due to her

deceased husband and the said amount was paid by the plaintiff by issuing the concerned cheque.

11. In this regard the findings recorded by the learned Trial Court shows that the defendant was not able to establish that amount of Rs.50,000/- was due to her husband from the transaction in respect of sale of gut No.123. Mere existence of previous transaction is not enough to discharge the burden, till it is shown that the amount involved in the cheque was due against the said transaction. The defendant has failed to discharge burden on her to prove that the cheque in question was issued for the purpose of the amounts due and payable to her husband. Having considered evidence on record, said finding recorded by the Trial Court cannot be faulted with.

12. With regard to the issue of limitation, it is pertinent to note that the suit is filed with specific pleadings that there was an agreement between the parties for repayment of the amount within one year of the issuance of the cheque. The judgments cited supra by the counsel for the appellant are on the facts wherein there was no agreement between the parties regarding specific time for repayment of the loan but the suit was filed on the basis of issuance of cheque only. In the circumstances in those cases, it was held that the suit filed beyond the period of three years from the date of issuance of cheque is not tenable. In considered

view of this Court, the said judgments have no application to the present case for want of similarity in facts involved therein. Herein plaintiff has not only pleaded but has led his evidence to show that there was such agreement may be oral. On the other hand, since defendant was unable to establish that the cheque was issued towards payment of dues of her husband from another transaction, in absence of any evidence contrary case of plaintiff deserves acceptance.

13. This appeal is under Section 100 of the CPC wherein it is obligation on the appellant to show that the appeal involves a substantial question of law and/or to show that the findings recorded by the Courts below on the fact are perverse for non consideration of evidence on record or incorrect appreciation of the same. In the instant case, this Court does not find any such error being committed by both Courts. In the result, no substantial question of law involved in the appeal. Hence the appeal stands dismissed. In the facts of the case, no order as to costs.

(R. M. JOSHI, J.)

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