



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 SECOND APPEAL NO. 413 OF 2024
WITH
CIVIL APPLICATION NO. 5716 OF 2024 IN SA/413/2024

Anil Bhimrao Lakade

VERSUS

Sandip Sharad Kankal

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Advocate for Appellant : Mr. S.S. Bora

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : December 11, 2024

ORDER :-

1. The appellant impugns the judgment and decree dated 19.4.2022 passed by the District Judge-6, Ahmednagar in R.C.A. No.387 of 2019, thereby upholding judgment and decree dated 31.8.2019 passed by the Civil Judge, S.D. Ahmednagar in R.C.S. No.530 of 2018 by which suit of the respondent/plaintiff for recovery of amount of Rs.3,50,000/- has been decreed against appellant/defendant. Parties hereinafter are referred to as per their 'original status' in the suit.

2. Plaintiff instituted the suit for recovery of amount of Rs.3,50,000/- against the defendant contending that in the

month of October, 2015 defendant requested for hand loan of Rs.5.00 Lakh for construction business. Considering need of defendant, plaintiff paid an amount of Rs.5,000/- in cash, rest by cheque of Rs.2,45,000/- and Rs.1,00,000/- drawn on State Bank of India, Savedi Branch. Defendant received amount and executed receipt dated 7.10.2016. However, he failed to repay the amount as promised. Eventually, a demand notice dated 5.10.2018 was served to him, which was not responded. Hence, cause of action arose to file present suit.

3. Defendant refuted plaintiff's claim stating that it was not loan transaction, but it was transaction regarding purchase of plot. Since transaction could not be materialized, amount received has been refunded. In fact, due to weird behaviour of plaintiff, defendant has suffered loss and false suit has been instituted for recovery of the amount.

4. Trial Court framed issues, recorded evidence of parties and concluded that plaintiff proved that he had advanced hand loan of Rs.3,50,000/- to the defendant, however, defendant failed to return the amount, as agreed. Eventually, decreed suit of the plaintiff for recovery of principal amount alongwith interest @ 8.5% p.a. Appellate Court also

concurred with the finding of Trial Court and dismissed appeal of the defendant.

5. Mr. Bora, learned advocate appearing for the appellant submits that, plaintiff is coming with the case that it was hand loan advanced to the defendant. Per contra, defendant has specifically put up the case that it was transaction regarding sale and purchase of the plot. However, no specific issue was framed in that regard. Even, Appellate Court has not framed appropriate points for consideration. Mr. Bora, would submit that, in fact, plaintiff could not prove the transaction of hand loan. He would submit that farce of execution of receipt below Exhibit-20 dated 7.10.2016 has been created. If transaction was of the year 2015, there was no occasion for execution of the receipt dated 7.10.2016. He would therefore urge that crucial issue involved in the matter is not dealt with by the Courts below which raises substantial question of law in the present second appeal.

6. Having considered the submissions advanced and reasoning adopted by the Courts below, it can be observed that plaintiff claims that between 7.10.2015 to 15.10.2015 he paid amount of Rs.3,50,000/- towards hand loan to the defendant.

Per contra, it is case of the defendant that he refunded said amount and transaction was different than what is pleaded by the plaintiff.

7. Pertinently, defendant accepts that he received amount of Rs.3,50,000/-. Even, otherwise said fact is duly proved on record since money transaction is channelized through the bank and same has been proved through evidence of PW-2 Rajesh Fursule, Manager of State Bank of India, Savedi. Similarly, evidence of PW-3 Dilip Thore, employee of Devgiri Nagari Sahakari Bank, Ahmednagar is recorded to show that amount was received in account of the defendant.

8. Pertinently, defendant is coming with the case that he has returned amount to the plaintiff. Naturally, burden to show that amount was returned/repaid would rest upon the defendant. Apparently, defendant could not bring on record acceptable evidence in support of his contentions. Trial Court has specifically dealt with this aspect while recording finding against issue no.2. Similarly, Appellate Court endorsed observations of the trial court. Therefore, assuming that nature of transaction is not proved on record, fact remains that defendant had received the amount from the plaintiff and

could not justify that he is entitled to retain it. On the other hand, he brings the story of refund, but fails to establish the same. Both fact finding Courts have concurrently held that plaintiff has proved his case and decreed the suit.

9. No substantial question of law arises for consideration in this second appeal. Hence, Second Appeal stands **dismissed**. Pending civil application stands **disposed off**.

(S. G. CHAPALGAONKAR)
JUDGE

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