

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.111 OF 2024
WITH
INTERIM APPLICATION NO.1664 OF 2024
IN
SECOND APPEAL NO.111 OF 2024**

**Sidharam Mallappa Unnad
V/S**

....Appellant/Applicant

Abhimanyu Basappa Rabba

....Respondent

Mr. Pradeep Salgar *for the Appellant/Applicant.*

Mr. Hrishikesh S.Shinde *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 26 MARCH 2024.**

P.C.:

1 By this Appeal, Appellant had challenged judgment and decree dated 4 December 2023 passed by *Ad hoc* District Judge-1, Solapur in Regular Civil Appeal No.70 of 2021 by which the learned Judge of the First Appellate Court has proceeded to dismiss Regular Civil Appeal No.70 of 2021 and has confirmed the decree passed by the Trial Court.

2 When the Appeal was taken up on 23 February 2024 this Court noticed a disturbing aspect where the learned Judge of the First Appellate Court has literally copied various findings of the Trial Court and has pasted the same in her order. The order passed by this Court on 23 February 2024 reads thus:

“1. Heard Mr. Salgar, the learned counsel appearing for the Appellant.

2. Apart from perversity in the findings recorded by the Trial Court and the First Appellate Court in the impugned judgments, Mr. Salgar would point out that First Appellate Court has literally copy-pasted various findings of the Trial Court. He would demonstrate the same as follows:

Findings of Trial Court		Findings of First Appellate Court	
Para No.		Para No.	
19	The defendant on his behalf has examined D.W.2 Bandu Gaikwad. He deposed that he knows the plaintiff and defendant. He knows that plaintiff is a money lender and he used to give money to the needy persons. He used to execute agreements for repayment of such amounts. He further deposed that the defendant has taken Rs.40,000/- from the grandfather of plaintiff at the interest rate of 20% per month.	13	The defendant on his behalf has examined Bandu Gaikwad (DW2). He deposed that, knows that plaintiff is money lender and he used to give money to the needy persons. He used to execute agreement for repayment of such amounts. He further deposed that, the defendant has taken Rs.40,000/- from the grandfather of plaintiff at the rate of interest of 20% per month.
20	the first meeting was held on 21.01.2015. On that day, he paid Rs.1,20,000/-. The document at Exh.21 i.c. an agreement to sale has been executed on 05.10.2015 i.e. after 10 months. In between the Plaintiff paid Rs.3,40,000/- by cash. Whereas, as per the	20	the first meeting was held on 21.01.2015. On that day, he paid Rs.1,20,000/- and document at Exh.21 ie. an agreement to sale has been executed on 05.10.2015 after 10 months. He paid Rs.3.40,000/- by cash whereas defendant stated that he obtained Rs.40,000/- by

	evidence of defendant, he has taken Rs.40,000/- from the cousin grandfather of the of plaintiff at the interest rate of 20% per month and he was paying Rs.8,000/- per month as interest.		cousin grand-father of the plaintiff with interest @ 20% per month and paying Rs.8,000/- per month as a interest.
16	the plaintiff has admitted in his cross that Sidramappa Unnad is brother of his grandfather. It means Sidramappa Unnad is cousin grandfather of plaintiff.	13	It appears that in the cross-examination, the plaintiff has admitted that Sidramappa Unnad is brother of his grandfather. It means that Sidramappa Unnad is cousin grandfather of plaintiff.
24	this transaction is of the year 2015 and how and why such amount has been paid without any single document of payment of such amount in this digital era, is a question."	24	this transaction is of the year 2015 and how and why such amount has been paid without any single document of payment of such amount in this digital era, is a question.
27	Therefore, no question of ready and willingness to perform the part of contract arose. Moreover, the plaintiff has admitted in his cross that, he has not taken possession of the suit property nor he has paid any taxes of the suit property though it is pleaded in the plaint.	16	Therefore, no question of ready and willingness to perform the part of contract arose. The plaintiff has admitted that, he has his cross that, he has not taken possession of the suit property nor paid any taxes though it is pleaded in the plaint.

3. The above findings are some of the illustrations and comparison of the orders passed by the Trial Court and the First Appellate Court shows that the First Appellate Court has mostly copied the findings recorded by the Trial Court. *Prima-facie*, the order passed by the First Appellate Court does not show any independent application of mind.
4. My attention is invited to another order passed by the same learned District Judge, which is set aside by this Court only on the ground of copying the findings of the trial court.
5. Issue notice to the Respondent, returnable on 18th March, 2024.
6. In addition to Court notice, Applicant is permitted to serve the Respondent by private notice and file Affidavit of Service before the next date of hearing.
7. List the Appeal 'High on Board' on 18th March 2024.
8. Till the next date of hearing, the Respondent is restrained from creating any third-party rights in respect of the suit property."

3 Faced with the above situation, the learned counsel appearing for the Respondent, after taking instructions from his client, fairly submits that the Respondent is willing to have the impugned decree dated 4 December 2023 passed by the First Appellate Court set aside and Regular Civil Appeal No.70 of 2021 can be remanded for being decided afresh. The learned counsel appearing for the Appellant is agreeable to this course of action.

4 Accordingly by consent of the learned counsel appearing for both the parties, the judgment and order dated 4 December 2023 passed by the District Judge-1, Solapur in Regular Civil Appeal No.70 of 2021 is set aside. Regular Civil Appeal No.70 of 2021 shall stand remanded before the District Court, Solapur for being decided afresh.

5 Considering the disturbing factor of the learned Presiding Officer has virtually copy-pasted the findings recorded by the Trial Court and also the fact similar course of action was adopted by her in another case, the learned Principal District Judge, Solapur shall assign Regular Civil Appeal No.70 of 2021 to another District Judge than the one who has passed the judgment and order dated 4 December 2023.

6 The learned District Judge who would be assigned Regular Civil Appeal No.70 of 2021 shall proceed to decide the same on his own merits without being influenced by any of the observations made in any of the orders passed in the present Appeal.

7 Appellant shall be at liberty to file an application before the District Judge to whom the Appeal would be assigned, seeking interim relief. Till such application is decided, the *ad-interim* relief granted by this Court by order dated 23 February 2024 shall continue to operate.

8 With the above directions, the Second Appeal is disposed of.

9 In view of the disposal of the Second Appeal, the Interim Application does not survive and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)