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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 612 OF 2023
WITH
INTERIM APPLICATION NO. 16642 OF 2023**

Shri Jyotiram Shankar Shirke and Others ... Appellants

Vs.

Smt. Mangal Sharad Nimbalkar ... Respondent

Mr. Machhindra A. Patil a/w. Mr. Vijay R. Garad for the Appellants.
Mr. A. S. Hingne for Respondent.

CORAM : GAURI GODSE, J.

DATE : 23rd SEPTEMBER 2024

ORDER :

1. Heard learned counsel for the appellants. This appeal is preferred by the original defendants to challenge the money decree passed by the First Appellate Court holding the plaintiff entitled to recover Rs.5,50,000/- from defendant nos. 1 to 3 with interest @ 6% per annum.

2. Learned counsel for the appellants submits that though the appellants had repaid an amount of Rs.2,20,000/- on 20th April 2008 the First Appellate Court completely ignored the said aspect. He submits that the plaintiff admitted in her cross examination that the

amount was paid to the plaintiff on 20th April 2008. He thus submits that the Second Appeal requires consideration on the question of law that an important piece of evidence in the form of admission by the plaintiff is ignored by the First Appellate Court.

3. I have considered the submissions made on behalf of the appellants. A perusal of the reasons recorded by the First Appellate Court indicates that the plaintiff has proved payment of Rs.5,50,000/- to defendant no. 2 by way of hand loan. The said hand loan is proved by way of hand loan receipt at Exhibit 21.

4. The First Appellate Court, thus by relying upon the said document held that the plaintiff proved payment of Rs.5,50,000/- to the defendants. The issue with regard to the repayment of Rs.2,20,000/- as contended on behalf of the defendants is also considered by the First Appellate Court. The First Appellate Court has recorded findings of facts in paragraphs 19 to 22 of the impugned judgment and disbelieved the case of the defendants, that only Rs.2,20,000/- was taken by way of hand loan. Thus, the reasons recorded by the First Appellate Court indicates that it was defendants' case that the hand loan was not for an amount of Rs.5,50,000/- but it was only for an amount of Rs.2,20,000/-. So far as the repayment of even the said amount of Rs.2,20,000/- is

concerned, there is no evidence produced on record to support the case of repayment. The First Appellate Court has thus disbelieved the defendants case that only an amount of Rs. 2,20,000/- was paid by way of hand loan.

5. Thus, the arguments raised on behalf of the appellants regarding repayment of the amount is with reference to the defendants' contention regarding accepting hand loan from the plaintiff only for an amount of Rs. 2,20,000/- and not for an amount of Rs. 5,50,000/-. Thus, the issue regarding obtaining hand loan from the plaintiff by the defendants is not in dispute and the only dispute appears to be the amount of hand loan. The document at Exhibit 21 produced by the plaintiff is accepted by the First Appellate Court as sufficient proof regarding payment of amount of Rs.5,50,000/- to the defendants by way of hand loan.

6. The grounds raised regarding repayment of the said amount is disbelieved by the First Appellate Court for want of any proof. Thus, the First Appellate Court which is the last fact finding court has thoroughly examined the oral as well as documentary evidence on record, and held that the plaintiff proved that she advanced hand loan of Rs.5,50,000/- to the defendants on 14th December 2007 and not Rs. 2,20,000/- as contended by defendant no.2. Thus, in the

absence of any documentary evidence regarding repayment of the hand loan, the First Appellate Court has rightly decreed the suit by holding that the plaintiff is entitled to recover Rs.5,50,000/- from defendant nos. 1 to 3 with interest.

7. I do not find any illegality or perversity in the reasons recorded by the First Appellate Court. The ground raised on behalf of the appellants would require re-appreciation of the pleadings and evidence on record, which is not permissible under Section 100 of the Code of Civil Procedure, 1908.

8. The Second Appeal does not raise any substantial question of law. Hence, Second Appeal is dismissed.

9. In view of the dismissal of the Second Appeal, Interim Application No. 16642 of 2022 is dismissed as infructuous.

[GAURI GODSE, J.]