



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**SECOND APPEAL NO. 556 OF 2012**

- 1) Dr. Ganesh S. Khandelwal,  
Aged about 66 years,  
Occupation - Doctor,  
R/o. 1, Manoj Building,  
Central Bazar Road,  
Ramdas Peth, Nagpur-10.
- 2) M/s Sainath Diagnosis & Research  
Centre, through its Director,  
the defendant/appellant,  
Nagpur, District Nagpur.

**.... APPELLANTS**  
(Original Defendants.)

**// VERSUS //**

M/s Pralhadrai Agro Industries,  
A registered Partnership Firm,  
having its principle place of  
business at Gondia, through it's  
Power of Attorney Holder.

Mr. Tejal S/o Sukhaji Patle,  
Aged Adult, Occ. Service,  
R/o. Arjuni Rawanwadi,  
Tahsil & Distt. Gondia.

**.... RESPONDENT**  
(Original Plaintiff)

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Mr. S. S. Sharma, Advocate for Appellants.  
Mr. S. M. Mate, Advocate for Respondent.

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**CORAM : SANJAY A. DESHMUKH, J.**

**DATE OF RESERVING THE JUDGMENT : 15.10.2024.**

**DATE OF PRONOUNCING THE JUDGMENT : 20.12.2024.**

**JUDGMENT.**

1. This second appeal is preferred against the judgment and decree passed by the Principal District Judge, Gondia, in the Regular Civil Appeal No.01/2012, dated 25.09.2012. The said Appeal was preferred against the judgment and decree passed by the Civil Judge, Senior Division, Gondia, in Special Civil Suit No.34/2004, dated 10.10.2011.

**PLAINTIFF CLAIM :**

2. The plaintiff is a registered partnership firm and Mr. Ashok Pralhadrai Agrawal is one of the partners of the said firm. The plaintiff's firm is engaged in business of trading rice at Gondia. The defendant No.2 is Research Centre and defendant No.1 is its director. The defendant No.1 is well acquainted with the plaintiff firm and its partners. The plaintiff contended that he paid Rs.1,00,000/- to the defendant No.1, through the defendant No.2 via Cheque No.246383 of Union Bank of India, Branch Nagpur, dated 4.7.2001. At the time of said hand loan transaction, the defendant No.1 provided a personal guarantee to refund the amount of the hand loan, within 15 days. But, the defendant No.1 failed to repay the said amount, within stipulated period and requested additional time. Therefore, the plaintiff wrote letters dated 14.10.2001 and

20.03.2002, for the refund of amount of the hand loan. However, the defendant No.1 refused to repay it and denied any liability. Therefore, the plaintiff issued a demand notice dated 31.05.2004, to the defendant No.1, despite this, the defendant No.1 failed to comply with the notice and issued a false reply notice to the plaintiff. Consequently, the plaintiff filed a suit for the recovery of the amount of Rs.1,00,000/- along with interest.

**DEFENCE :**

3. The defendants denied the plaintiff's claim and contended that the defendant No.2 was not a juridical person, therefore, the suit is not maintainable against the defendant No.2. It is further contended that Ashok Agrawal had contributed some amount in his capacity as a Vice-president of Sainath Rural Education Society, Nagpur. This amount was repaid to the Ashok Agrawal through post dated Cheques of Rs.10,000/- each. Additionally, Sudhir Paliwal of Nagpur was directed by the defendant No.2 to pay Rs.1,00,000/- to the plaintiff, which was duly paid. Thus, the defendants submitted that no cause of action remained for filing the suit. They ultimately prayed for the dismissal of the suit.

4. The learned Trial Court partly decreed the suit and held that the plaintiff firm is entitled to recover Rs.1,00,000/- from the defendant No.2, along with interest @6% per annum thereon. The learned First Appellate Court held that it was the responsibility of the defendants to repay the loan to the plaintiff and dismissed the appeal filed by the defendants.

5. The substantial questions of laws are as follows :

- (i) *Whether the Trial Court has jurisdiction to entertain, try and decide the suit?*
- (ii) *Whether the suit is maintainable against M/s Sainath Diagnosis & Research Centre which is neither a Society registered in the Societies Registration Act, nor a Public Trust registered under the Bombay Public Trust Act, but it is the activity, which is part and parcel of Shri Sainath Rural Education Society, Nagpur, which has not been joined as a party-defendant in the said suit?*

6. Perused the impugned judgments and decree and relevant documents.

7. The learned Advocates for the appellant/Defendant submitted that Civil Court has no jurisdiction to try suit. The appeal therefore, deserves to be allowed. He pointed out the reasons and

findings of both the Courts are not in accordance with the provision of law and facts of the case in hand. He prayed to allow the appeal and dismiss the suit by setting aside the impugned judgment and decree of trial Court.

8. The learned advocate for the plaintiff submitted that defendant came with mischievous defence of denial etc. There is concurrent finding against the defendant. He lastly prayed to dismiss the appeal with costs.

9. Sudhir Paliwal plaintiff's witness deposed that he paid that amount of Rs.10,00,000/- to the defendant. His evidence was not shaken during the cross examination. Thus, the burden lies on the defendant, to prove that, when he repaid the amount of Rs.1,00,000/- to the plaintiff as asserted by him. In this regard, Nana Telang (PW-4), an employee of Union Bank of India, deposed that an amount of Rs.5,00,000/- was credited to the account of Sudhir Paliwal, which was proved by the extract of the Bank Account at Exhibit-105. As per the certified copy of the Cheque of Rs.1,00,000/- issued by Sudhir Paliwal to the Sainath Diagnosis and Research Center, it was credited to the account of defendant No.2 by Cheque No.24383. This evidence is natural and independent and has not

been disproved. On the contrary, the defendant did not adduce any cogent and acceptable evidence to prove that he repaid the amount of Rs.1,00,000/- to the plaintiff Sudhir Paliwal.

10. Thus, there are concurrent findings of facts against the defendants on the facts. Therefore, considering the reasons and findings of both the Courts, there is absolutely no perversity or illegality in the impugned judgments. The learned Trial Court and the First Appellate Court has rightly held that the Trial Court has the power to entertain, try and decide the said suit against M/s. Sainath Diagnosis & Research Center though it was not registered and that the suit is maintainable. The learned Trial Court and the First Appellate Court appreciated and reappreciated the entire evidence. The learned Trial Court concluded that an amount of Rs.5,00,000/- was given by the plaintiff to one Sudhir Paliwal, who was directed by the plaintiff to pay the amount of Rs.1,00,000/-, when it was demanded by the defendant to him as a hand loan.

11. Both the Courts have held that amount of Rs.1,00,000/- was paid by the plaintiff from his bank account of Gondia. Hence, the substantial question of law No.1 as to jurisdiction is answered in the affirmative.

12. The suit is rightly held maintainable against Sainath Diagnosis & Research Centre as held by both the Courts. There is a concurrent finding against the defendant regarding it. There is no scope for interference in it as there is no any illegality and perversity in it. Hence, substantial question of law no.2 is answered that suit is maintainable.

13. There is no substance in the argument of the learned Advocate for the appellant/defendants and therefore the precedential law cited Supra is not helpful to the defendant. Hence, it is not relied upon.

14. In view of the concurrent findings against the defendants, and as per the law laid down by the Hon'ble Supreme Court in the Case of ***Gurnam Singh Vs. Lehna Singh***, reported in ***(2019) 7 SCC 461***, that, unless conclusion is drawn vitiated by error of law or procedure and there is a perversity or illegality in the impugned judgment, no interference is warranted in second appeal. Hence the argument of the learned Advocate for the appellants/defendants is not acceptable in this regard. Therefore, the substantial questions of law are answered in the 'Negative'.

15. The defendant came with mischievous defences and failed to prove any substance in it. The plaintiff is compelled to face this appeal without any substance in it. Therefore, he is entitled for costs of Rs.15,000/- from the defendant which he must have incurred to face this appeal.

16. The appeal deserves to be dismissed. The appeal is **dismissed** with costs of **Rs.10,000/-** (Rs. Ten Thousand only) to be paid to the respondent within a period of three months. If the costs is not paid within three months, the appellant is directed to pay 9% interest thereon.

(SANJAY A. DESHMUKH, J.)

*Kirtak*