



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

**939 SECOND APPEAL NO. 441 OF 2014
WITH CIVIL APPLICATION NO. 198 OF 2025**

**SUHAS POTHATTI DUSAL
VERSUS
AMOL RAMKUMAR RATHOD**

Mr. A. G. Dalal, Advocate for the Appellant
Mr. S. R. Deshpande, Advocate for the Respondent

**CORAM : R. M. JOSHI, J.
DATE : 16th JANUARY, 2025**

PER COURT :-

1. Appellant is the original defendant and being aggrieved by the reversal of judgment and decree passed by Trial Court in Spl.C.S. No. 386/2007 and partly allowing suit by First Appellate Court in R.C.A. No. 323/2012, has preferred this appeal under Section 100 of the Code of Civil Procedure.

2. Learned counsel for the appellant submits that the Trial Court has committed error in passing the decree on the basis of the oral evidence of the plaintiff and one more witness who happens to be the relatives of the plaintiff. He further submits that the First Appellate Court has erred in accepting the said evidence on preponderance of probability. He also submitted that though the defendant had paid Rs.1,65,000/- to the plaintiff, the same has been explained by him in his evidence by

claiming that the said amount was paid towards remuneration.

3. At the outset it needs to be recorded that the civil proceedings are required to be decided on preponderance of probability than not on restrict proof of the fact as required in a criminal trial. There is no dispute that plaintiff and defendant were doing business in name and style M/s Marathwada Electro Medicals, under partnership firm. Herein this case the plaintiff has not come out with the case of any written agreement executed between the parties in determining sharing the profits of the partnership. Once he does not come out any such case, the contention of the plaintiff can be proved through oral evidence. In this regard undisputedly plaintiff has examined himself and also led evidence of one witness. There is no dispute about the fact that defendant has paid a sum of Rs.1,65,000/- to the plaintiff. Plaintiff has admitted the said fact that out of total sum of Rs.3,30,000/-, he is entitled to claim a sum of Rs.1,45,857/- i.e. the remaining amount.

4. On the other hand, though defendant has claimed that he has paid Rs.1,65,000/- towards remuneration, there is no evidence other than his solitary statement is placed on record. Pertinently, unless there is probable evidence that separate remuneration was payable to one of the partners, case of defendant does not become acceptable.

5. The First Appellate Court has reappreciated the evidence on record which is permissible in law. The findings recorded by the First Appellate Court are not perverse in order to cause any interference therein. Merely because this Court can take different view than the one taken by Appellate Court, it is not permissible to cause interference in the order in exercise of the jurisdiction under Section 100 of the Code of Civil Procedure.

6. Since, no substantial question of law is involved in this appeal, it stands dismissed. Pending application stands disposed of.

(R. M. JOSHI, J.)

ssp