



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

925 SECOND APPEAL NO. 651 OF 2017
WITH
CIVIL APPLICATION NO. 13084 OF 2017
IN SA/651/2017

RAJESHRI MURLIDHAR LONE
VERSUS
RAJENDRA RAMKISHAN JAYBHAYE

...
Advocate for Appellant : Mr. Dinesh Manwatkar h/f Mr. Sachin S. Randive
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CORAM : S. G. CHAPALGAONKAR, J.
Dated : 06.03.2025

PER COURT :-

1. Heard learned Advocate appearing for appellant.
2. Appellant/defendant seeks to challenge judgment and decree dated 13.03.2024 passed by District Judge, Aurangabad in Regular Civil Appeal No. 94 of 2015, thereby upholding judgment and decree dated 13.03.2014 passed by learned Civil Judge, Senior Division, Aurangabad, in Special Civil Suit No. 174 of 2014, by which suit of respondent/plaintiff seeking recovery of amount of Rs.6,50,000/- has been decreed.
3. Appellant/defendant instituted Special Civil Suit No. 174 of 2012 contending that defendant is engaged in business of broker-ship. On 25.05.2009 she requested for advancing Rs. 7,00,000/-, so as to assist her in land transaction. In view of cordial relations such amount was paid to her on 01.06.2009 on promise that she will refund it within a period of one month. Thereafter on 11.07.2009 defendant refunded cash amount of Rs. 50,000/- and gave a cheque of Rs. 6,50,000/- towards balance amount. On presentation of said cheque, it was dishonoured.
4. Defendant was served with suit summons, however, failed to

file his appearance, eventually matter proceeded ex-parte vide order dated 22.10.2012.

5. Plaintiff stepped into witness box, recorded her oral evidence and relied upon cheque dated 11.07.2009, return memo, postal acknowledgment of notice served upon defendant, so also copy of judgment and order in SCC No. 623 of 2010.

6. Trial Court after evaluation of evidence accepted case of plaintiff that defendant had handed over cheque towards refund of hand loan and decreed suit directing defendant to pay Rs. 6,50,000/- along with 6% interest to the plaintiff from date of institution of suit.

7. Aggrieved defendant filed Regular Civil Appeal No. 94 of 2015 assailing judgment and decree passed by trial Court. However, appellate Court pleased to dismiss appeal upholding decree of trial Court.

8. Learned Advocate appearing for appellant submits that ex-parte decree for recovery of amount has been passed against appellant and appellant needs to be given an opportunity to defend suit and for that purpose matter needs to be remanded back to trial Court. He would point out that in fact, on basis of same cheque plaintiff had instituted SCC NO. 623 of 2010 u/s 138 of Negotiable Instruments Act, in which defendant has been acquitted holding that complainant failed to prove legally enforceable debt.

9. Having considered submissions advanced, it can be observed that there is no dispute that defendant was served with suit summons. Defendant has not given any reason for his non appearance or for non contesting claim in suit. Perusal of appeal memo before District Judge shows that no reason is mentioned for non appearance before trial Court. It is not the case that defendant was not given opportunity to contest suit or he was prevented by sufficient cause from entering his appearance

before trial Court. Therefore, first contention of appellant that matter needs to be remanded back by setting aside impugned judgment and decree cannot be countenanced.

10. Perusal of reasoning adopted by Court below shows that plaintiff has proved transaction so also delivery of cheque of Rs. 6,50,000/- by the defendant. Cheque was presented to the bank and that was returned with endorsement "Funds Insufficient". Both Courts found that suit is well within limitation. Concurrent findings recorded by Courts below appears to be based on appreciation of evidence. No perversity is discernible in approach of Courts below. Therefore, only because defendant has been acquitted in Criminal Proceeding, his liability under Civil Law would not extinguish.

11. In result, appeal sans substantial question of law, hence dismissed.

12. Pending Civil Application stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

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