



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

17 SECOND APPEAL NO.233 OF 2015

Dashrath Narayan Dhumal

....Appellant

Versus

Ujjwala Dilip Shete & Ors.

....Respondents

Mr. Ram B. Deshpande, Advocate for Appellant.

Mr. Vinayak Sudhakar Bedare, Advocate for Respondent Nos.1 to 3.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 3rd MARCH 2025

PC.:-

1. Heard Mr. Ram Deshpande, learned Advocate appearing for the Appellant.

2. The Appellant/Original Plaintiff impugns judgment and decree dated 3rd July 2014, passed by learned District Judge-3, Ahmednagar in Regular Civil Appeal No.284 of 2012, thereby upholding judgment and decree dated 12th April 2007, passed by learned Civil Judge, Senior Division, Ahmednagar in Special Civil Suit No.84 of 2004, by which the suit of Appellant/Original Plaintiff for recovery of amount of Rs.2,50,000/- has been dismissed. [Hereinafter parties are referred as per original status in the suit for brevity and convenience].

3. The Plaintiff contends that husband of Defendant No.1 and father of Defendant Nos.2 and 3 had obtained the hand loan of Rs.2,50,000/- from him. In discharge of the said liability, he had issued a cheque for same amount. The said cheque was dishonoured. However, later on he died. Therefore, suit has been instituted against the Defendants for recovery of the amount. Mr. Deshpande submits that in support of the Plaintiff's contention, oral evidence of PW2 and PW3 has been recorded. The transaction took place in presence of PW2. Bank Manager-PW3 proved issuance of cheque and its dishonour. According to Mr. Deshpande, in such a case, presumption would arise in favour of Plaintiff in light of Sections 118 and 139 of Negotiable Instruments Act, 1996. According to him, in light of presumption, it was burden on Defendants to prove that there was no legally enforceable date. The Courts below have recorded perverse findings of facts as such the substantial question of law arises in this appeal.

4. Per contra, Mr. Vinayak Bedare, learned Advocate appearing for Respondent Nos.1 to 3-Defendants supports the impugned judgments and decree. According to him, the concurrent findings of facts have been recorded by Courts upon appreciation of evidence, which does require interference in the second appeal.

5. Having considered submissions advanced, it can be observed that Plaintiff relied upon evidence of PW2 to prove the transaction. Evidence of PW2 depicts that at three different occasions, the amount was paid by Plaintiff to husband of Defendant No.1 and at each time, he had issued a cheque towards repayment of loan. PW2 could not give the particulars like date as to actual payment, place of the payment, the particulars of payment, etc. His statement is vague. Both Courts have observed that Plaintiff was in business of tailoring work and admits that he was earning Rs.60,000/- to Rs.70,000/- per annum out of said business. In this background, Plaintiff's theory of cash payment Rs.2,50,000/- to Defendants cannot be accepted. The Courts have further observed that cheque in question was presented to bank after five months of death of husband of Defendant No.1. Both the Courts have concurrently held that Plaintiff could not prove hand loan of Rs.2,50,000/- made to husband of Defendant No.1 i.e. Dilip Shete. The finding of fact is arrived after appreciation of evidence. No perversity is discernible in such finding.

6. The second contention raised by Mr. Deshpande is that the Appellate Court failed to follow the mandate under Order XLI Rule 33 and frame necessary points for consideration. The perusal of judgment of Appellate Court shows that the Appellate Court dealt with all the contentions or points of controversies between the parties and

recorded adequate reasons. Therefore, even assuming that the points of consideration were not framed in tune with requirement of Order XLI Rule 33, in absence of prejudice being caused, no interference can be caused in exercise of jurisdiction under Section 100 of Code of Civil Procedure, 1908.

7. In result, no substantial question of law is made out in this appeal. Appeal sans merit, hence, dismissed.

(S. G. CHAPALGAONKAR, J.)