



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

964 SECOND APPEAL NO. 93 OF 2025
WITH
CIVIL APPLICATION NO. 14274 OF 2023 IN SA/93/2025
WITH
CIVIL APPLICATION NO. 11901 OF 2024 IN CA/14273/2023

1. Deelip S/o. Limbaji Bhandare (*died*)

1/1. Smt. Rohini Wd/o. Deelip Bhandare

1/2. Swanand S/o. Deelip Bhandare

1/3. Yogita D/o. Deelip Bhandare

1/4. Deepa D/o. Deelip Bhandare

... APPELLANTS

VERSUS

1. Hanumant S/o. Narhari Huge

2. Limbaji S/o. Haribhau Bhandare (*died*)

2/1. Kusumbai W/o. Limbaji Bhandare
(*dead and deleted*)

2/2. Deepak S/o. Limbaji Bhandare

2/3. Nitin S/o. Limbaji Bhandare

2/4. Prafullata W/o. Suryakant Khade

2/5. Vaishali W/o. Anil Sapare

... RESPONDENTS

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Mr. Aniruddha A. Nimbalkar - Advocate for Appellants

Mrs. M.A. Kulkarni - Advocate for Respondent No.1

Mr. Akash D. Gade - Advocate for Respondent Nos.2/2 to 2/5

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CORAM : SHAILESH P. BRAHME, J.
DATE : 17.06.2025

JUDGMENT :

1. Heard both sides.
2. Appellant No.1 is challenging concurrent finding of facts recorded for decreeing the suit of respondent No.1 - Hanumant S/o. Narhari Huge for recovery of Rs.2,70,000/-.
3. Respondent No.1 filed Special Civil Suit No. 24 of 2002 for recovery of amount of Rs.2,70,000/- from appellant No.1 and his father present respondent No.2 - Limbaji S/o. Haribhau Bhandare. It was given as handloan for their joint family business. Despite pursuation the amount was not repaid. Cheques were issued towards repayment. Those could not be honoured. Ultimately agreement was executed on 18.11.1999 by appellant No.1 admitting the liability and ensuring the repayment. Appellant No.1 and his father failed to repay the amount which gave cause of action to file the suit.
4. Appellant No.1 could not be served in the Trial Court with summons by regular mode of service. He was served through substituted mode of service. He did not appear and the suit

proceeded *ex-parte* against him. Respondent No.2 though appeared did not file written statement.

5. Considering the oral evidence and the documents on record, suit was decreed on 14.03.2011. The decree was assailed by appellant No.1 by preferring Regular Civil Appeal No. 8 of 2016 and by respondent No.1 - plaintiff filed Regular Civil Appeal No. 116 of 2012, as respondent No.2 was exonerated from the liability. By common judgment and decree passed by the District Judge - 1, Ambajogai, Dist. Beed on 24.03.2023 both the appeals were dismissed.

6. In the lower Appellate Court stay was granted to the execution of the decree on condition of depositing amount of Rs.2,00,000/-. That interim order was challenged by respondent No.1 in the High Court in Writ Petition No. 5911 of 2022. The writ petition was allowed vide order dated 10.01.2023 and entire decretal amount was directed to be deposited. No compliance was made and ultimately stay was vacated. The amount deposited was withdrawn by respondent No.1.

7. In this backdrop, this Court is called upon to examine the matter on merits.

8. Learned Counsel - Mr. Aniruddha A. Nimbalkar for the appellants tenders on record substantial questions of law, stated in additional ground Nos. I to VIII. It is submitted that, appellant No.1 was not given opportunity to contest the suit as there was no valid service of summons. Matter needs to be remanded back to the Trial Court to extend opportunity to the appellants as their valuable rights are prejudiced. It is further contended that, issues were not properly framed by the Trial Court. He would further submit that exoneration of respondent No.2 from the liability to repay is perverse. The lower Appellate Court adopted hyper technical approach in holding the appellant liable. The evidence of witness No.1 has not been properly appreciated. It is contended that, there is collusion in between respondent Nos.1 and 2 and therefore, the suit was allowed to be decreed against the appellants.

9. *Per contra*, Mrs. M.A. Kulkarni appearing for respondent No.1 would support the impugned judgment and order. She would make submissions on the basis of written submissions placed on record. It is contended that, both the Courts meticulously gone through record in concluding there was valid service upon appellant No.1 and he remained absent in the Trial Court. It is further contended that appellant No.1 and his father did not file any written statement.

Their conduct is objectionable as they failed to comply the directions issued by the High Court 10.01.2023 in Writ Petition No. 5911 of 2022. It is contended that there is no merit in the submissions and substantial questions of law placed into service. It is further contended that, in Regular Civil Suit No. 10 of 2012 the appellant No.1 expressly accepted the liability to repay the amount of respondent No.1 which is reflected in the compromised decree.

10. Learned Counsel - Mr. Akash D. Gade for respondent Nos.2/2 to 2/5 adopts the submissions of learned Counsel for respondent No.1.

11. I have considered rival submissions of the parties and I have gone through both the judgments. Before advertng to the merits of the matter, it is necessary to examine as to whether appellant No.1 was duly served in the Trial Court. In this regard, Trial Court recorded that appellant No.1 was duly served through paper publication and matter proceeded *ex-parte* against him vide order dated 20.04.2005. The respondent No.2 though appeared in the matter did not file written statement. Therefore matter proceeded without written statement against him vide order dated 14.01.2004.

12. The findings recorded by the lower Appellate Court in

paragraph Nos.26 to 28 are relevant and elaborate. The lower Appellate Court has taken pains in going through record meticulously. The *roznama* of the civil suit has been taken into consideration to conclude that, there was valid service on appellant No.1. It is further recorded that, appellant No.1 could not be served by regular mode of service and repeated attempts were made failing which substituted service was resorted to. It is further observed that the Presiding Officer did not pass *ex-parte* order immediately on 24.03.2005 when report was submitted. After waiting for some time ultimately it was passed on 20.04.2005.

13. A thread bare inquiry has been conducted by the lower Appellate Court and its conclusion for valid service upon appellant No.1 cannot be discarded. The findings of the facts recorded by both the Courts below are in accordance with record, plausible and reasonable. The substantial questions of law tried to be agitated, in this regard stating violation of principle of natural justice have no merit.

14. Another facet of the matter is that, appellant No.1 was aware of the proceedings in the Trial Court and he was fence sitter. In the collateral Regular Civil Suit No.10 of 2012 he accepted liability of

repayment of amount vide compromise decree. He had executed agreement also accepting his exclusive liability. The circumstances indicate that, he deliberately remained absent and dodged repayment. Despite of directions given by the High Court in Writ Petition No. 5911 of 2022 vide order dated 10.01.2023, no compliance was made and ultimately stay was vacated.

15. The submissions of learned Counsel for the appellants that, appellant No.1 was not aware of the decree passed by the Trial Court, his client died and heirs were not aware of the proceedings cannot be countenanced. Once there was valid service of summons on the appellant No.1, he was bound to appear before the Court.

16. The appellant No.1 and respondent No.2 did not file written statement. There is no contest to the claim of appellant No.1. Both the Courts below are justified in holding the appellant No.1 is liable in view of agreement dated 18.11.1999, decree passed in Regular Civil Suit No.10 of 2012 at Exhibit-20 and the oral evidence of the respondent No.1. I do not find any perversity or patent illegality in the findings arrived at by both the Courts below. I find no merit in the case of appellants and the substantial questions of law posed for the consideration. The submissions of learned Counsel for the

appellants that, there was collusion between respondent Nos.1 and 2 is thoroughly unfounded. No case is made out to entertain the Second Appeal.

17. Second Appeal stands dismissed.

18. In view of dismissal of Second Appeal pending Civil Applications also stand disposed of.

[SHAILESH P. BRAHME]
JUDGE

Pooja Kale