



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

SECOND APPEAL NO.28 OF 2021

Dinkar S/o Rajaram Sarap Vs. Central Bank of India and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri O.Y. Kashid, Advocate for appellant (through VC).
Shri N.W. Amlekar, Advocate for respondent no.2.

CORAM : M.W. CHANDWANI, J.

DATE : 24.06.2025.

1. Heard.
2. By order dated 05.12.2022, the following substantial questions of law have been framed:

“(i) Whether the Courts below erroneously dismissed the suit as well as the appeal on the ground of non examination of Medical Officer/Doctor specially when the appellant was directed by the respondent Bank to remain present before the Medical Board?

(ii) Whether the learned appellate Court is justified in rejecting the claim of the appellant for permission to lead his additional evidence below Exhibit-11? ”

3. The appellant filed s suit for declaration, injunction and monetary relief of Rs.3,300/- from the respondents, *inter alia* contending that he met with an accident in the year 1999 and suffered injuries to both his knees. As a result, he suffered 45% disability. Accordingly, the disability

certificate was obtained from the Civil Surgeon, Akola. Even the Medical Board issued a certificate of permanent disability. Initially, a traveling allowance of Rs.100/- per month which is generally granted to handicapped employees was sought by the appellant which was denied by the respondents. The injury suffered by the appellant in the year 1999 was disbelieved, so also the claim of permanent disability. The respondents came-up with a case that they were not satisfied with the disability certificate issued by the Civil Surgeon. Therefore, the appellant was referred to the panel of expert doctors of the respondents-Bank who refused to certify the appellant as a physically handicapped employee. Therefore, the respondents sought rejection of the suit.

4. The learned Judge after framing the issues, non-suited the appellant on the ground that the appellant failed to examine the Doctor who issued the certificate at Exh.61. Before the learned District Judge, the appellant filed an application for permission to adduce the evidence of Dr. Ashok Bhopale, the then Civil Surgeon, Akola. The learned District Judge dismissed the appeal as well as the application below Exh.11 for permission to adduce evidence of Dr. Ashok Bhopale, who issued the certificate at Exh.61.

5. Shri Kashid, learned counsel for the appellant submits that the certificate is not only issued by the Civil Surgeon, Akola but also a panel of the Medical Board, Yavatmal which

is at Exh.60. Though, the trial Court has held that those certificates have not been proved, the appellant filed an application to adduce additional evidence before the first appellate Court which came to be rejected erroneously and consequently, the appeal came to be dismissed. According to him, both the certificates reveal that the appellant had permanent disability to the extent of 45% and therefore, the trial Court as well as the first appellate Court ought to have appreciated this fact and should have allowed the claim of the appellant.

6. *Per contra*, Shri Amlekar, learned counsel for the respondents supported the judgment of trial Court as well as the first appellate Court and sought rejection of the appeal.

7. Though, I find support in the argument of the learned counsel for the appellant that nobody entered the witness box on behalf of the respondents to prove the defence of the respondents that the Board constituted by them did not hold that the appellant suffered permanent disability to the extent of 45%; but the fact remains that, it is for the appellant to prove that he has permanent disability to the extent of 45% as claimed by him. No doubt, the certificate at Exh.60 claimed to be issued by the Medical Board, Yavatmal and the certificate at Exh.61 issued by the Civil Surgeon mention the permanent disability of the appellant to the extent of 45% but the appellant also failed to examine any person to prove these documents before the trial Court. No doubt, the

appellant filed an application for adducing the evidence of Dr. Ashok Bhopale, the then Civil Surgeon, Akola but the learned District Judge, Akola rejected the application on the ground that the appellant failed to demonstrate that the doctor was alive on the date of application and on the contrary, it was contended that it is not necessary to examine the doctor who issued the disability certificate. On one hand, an application is filed to examine Dr. Ashok Bhopale who has issued certificate and on the other, a contrary submission was made by him that it is not necessary to examine the doctor who issued the certificate (Exh.61). Therefore, I do not find any reason to interfere with the findings of the first appellate Court while rejecting the application for adducing the evidence of Dr. Ashok Bhopale.

8. Having failed to examine Dr. Ashok Bhopale who has issued the certificate (Exh.61) before the trial Court as well as the first appellate Court, the finding of trial Court as well as the first appellate Court that the certificate (Exh.61) has not been duly proved, cannot be faulted with. Therefore, no interference is warranted in the concurrent findings of the trial Court as well as the first appellate Court. The appellant failed to show any perversity in the order and hence, no substantial questions of law arise. The appeal stands **dismissed**.

JUDGE

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