



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

SECOND APPEAL NO.258 OF 2024

APPELLANTS
(Ori. Defendants)

:- 1) Gawande Provisions through Prop. Shri.
Gowardhan Anandrao Gawande Age: 68
years, Occupation: Business

2) Sagar S/o. Gowardhan Gawande
Age : 38 years, Occ: Business,
Both are R/o Anandwadi, Tiwsa, Tq.
Tiwasa, Distt. Amravati.

..VERSUS..

RESPONDENT
(Ori. Plaintiff)

:- M/s Kashinath Radheshyam, Through
Proprietor Shri. Omprakash Badrinarayanji
Agrawal Age : 60 Yrs. Occupation :
Business, R/o Tiwsa, Tq. Tiwsa, Dist.
Amravati.

Ms. Payal Kaware, Advocate for Appellants.
Mr. J.M. Gandhi, Advocate for Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 05/12/2025

ORAL JUDGMENT :

1. Heard.

2. The present respondent has filed a suit for recovery of
money, which was dismissed by the learned trial Court. The case of

the plaintiff is that the defendants had purchased sugar from him amounting to Rs.94,750/-, out of which a sum of Rs.5,000/- was paid and Rs.89,750/- was outstanding. The plaintiff has entered the witness box and has proved the copies of the bills in question, which are at Exhs.16, 17 and 18 and the receipt of payment of Rs.5,000/- which is at Exh.19. These documents, however, were discarded by the learned trial Court on the ground that the documents in question were not original documents but photocopies prepared from carbon copies of the relevant documents and further that the signatures of the defendants on the said documents did not tally with the signatures of the defendants on the written statement, Vakalatnama and registered address form. The defendants have not entered the witness box.

3. The learned First Appellate Court has allowed the appeal preferred by the original plaintiff. The learned First Appellate Court found that the documents in question were compared by the concerned officer of the Court in accordance with the Order 7 Rule 17 (2) of the Code of Civil Procedure, 1908. The learned First Appellate Court also considered the fact that the documents in question were exhibited without any objection from the defendants. Apart from this, the learned First Appellate Court has also drawn

adverse inference against the defendants for not entering the witness box. This reversing the judgment passed by the learned First Appellate Court is challenged by the defendants by filing the present second appeal. Notice was issued in the present appeal vide order dated 03.10.2024, on the following substantial question of law:-

“Was the learned first Appellate Court illegal and incorrect in re-appreciating the evidence of bills at Exhs.16 to 18 and invoking Rule 17(2) of Order 7 of the Code of Civil Procedure ?”

4. The learned Advocate for the appellant has placed reliance on the full bench decision of this Court in the matter of *Hemendra Rasiklal Ghia ..vs.. Subodh Mody*, reported in **2008(5) CTC 577**, to contend that merely because the documents in question are marked as exhibits does not mean that they are duly proved. The contention is that question relating to the admissibility of documents can be entertained at any stage, including during the course of hearing of the appeal. The said contention raised by the learned Advocate for the appellant cannot be accepted as a blanket proposition. When an objection is raised to the admissibility of a document *per se*, such an objection to the said admissibility can be raised at any stage, provided the document itself is not admissible in

evidence. However, if the objection pertains to the mode of proof of document, objection with regard to marking the document must be taken before it is marked. If such an objection is taken in time, it is open for the person who relies on the document, to lead further evidence to make the document admissible in the evidence. The contention that the documents at Exhs.16 to 19 could not have been read in evidence on the ground that the same are not original documents but photocopies and as such secondary evidence is liable to be rejected, since secondary evidence is not *per se* inadmissible and objection to admissibility these documents was admittedly not taken before the same were marked. If such objection was raised, the plaintiff could have taken further steps to prove the same.

5. It is not in dispute that the concerned officer has verified the photocopies of the documents from the carbon copies in the bill book and receipt book.

6. The learned trial Court has clearly erred in discarding the documents on the ground that the documents were not original documents and permission to lead secondary evidence was not obtained.

7. As regards the signatures of the defendants on the said documents, the plaintiff has filed the documents on record and the

plaintiff's witness has also stated during the course of examination in chief that the bills were signed by the defendants. The signatures of defendants were identified during the course of the examination in chief. The defendants did not enter the witness box to make a statement on oath that the signatures on the disputed bills i.e. Exh.16 (defendant No.1) and Exhs.17 and 18 (defendant No.2) were not their signatures.

8. The defendants did not enter the witness box to deny their signatures over the documents in question. It must also be stated that the defendants had not entered the witness box and therefore, an adverse inference is required to be drawn against the defendants. In the considered opinion of this Court, the learned First Appellate Court was justified in drawing an adverse inference against the defendants on this count.

9. In that view of the matter, the substantial question of law framed vide order dated 03.10.2024 deserves to be answered in favour of the respondent/plaintiff.

10. Second appeal is therefore **dismissed** with no order as to costs.

CIVIL APPLICATION (CAS) No.903 of 2025

11. Since the second appeal is dismissed, amount deposited by the appellants with this Court is permitted to be withdrawn by the respondent along with accrued interest, if any.

Civil Application is **disposed of**.

(ROHIT W. JOSHI, J.)

C.L. Dhakate