

Spl.C.S.No.71/2017.
Bank of India Vs. Ramchandra
Wayadande.
(CNR No.-MHST05-000602-2017)

ORDER BELOW EXH.31.

Present application is filed by defendant No.2 Yashwantrao Mohite Sugar Factory contending that, in present suit the plaintiff bank has made defendant No.1 borrower and defendant No.2 as guarantor to alleged loan transaction. According to this defendant in reality no any loan amount is disbursed to defendant No.1 and as such the contention of plaintiff that the defendant No.2 is guarantor is false one. So, the defendant No.2 is praying that an additional issue be framed as follows.

“ Whether it is proved that the plaintiff has done fraud in the loan transaction ? ”

It is also contended that, the defendant No.1 made specific pleading in respect of same in his written statement.

2. Present application is strongly opposed by the plaintiff contending that, application is false one. He has further contended that except the compliance of Order 14 Rule 4 the defendant cannot make such allegation which is lacking in material particular against the plaintiff. As such the plaintiff bank has prayed to reject the application.

3. Heard both Learned Advocates at length. Now, this is suit for simplicitor recovery of amount against the defendants, so burden lies upon plaintiff to prove the alleged loan amount given to the defendants. Here contention of defendant No.2 is that loan amount is not at all disbursed so question of his staying guarantor does not arise and further allegation that bank has committed fraud. Here, for the simplicitor recovery suit commission of alleged fraud is not at all the issue for final determination of suit at the most if the defendant succeeds to prove suit brought by plaintiff is false and vexatious then he will be entitled to compensatory costs. For the purpose of determination of present recovery suit negative burden cannot be cast upon the plaintiff and when it is for the plaintiff to establish the alleged loan then question of fraud or defence of fraud can be covered in it. Consequently following order.

ORDER

Application stands rejected.

Date:- 19/12/2023.

Place:-Karad.

(Smt.S.Y.Deshmukh)

2nd Jt. Civil Judge, Sr.Division, Karad.