

(Judgment)

1 Special Civil Suit No. 57/2019
CNR NO.: MHKO07-002127-2019

MHKO070021272019



Received on	:	07.11.2019
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IN THE COURT OF THE CIVIL JUDGE SENIOR
DIVISION, JAYSINGPUR, TAL.- SHIROL,
DISTRICT KOLHAPUR.
(Before B.A. Gaikwad)

Special Civil Suit No. 57/2019
CNR NO.:MHKO07-002127-2019
Exh. No.

Shri. Sudarshan Irisha Badsunke,
Age- 37 Yrs., Occu. Agriculture,
R/o. Khidrapur, Tal. Shirol,
Dist. Kolhapur.

... Plaintiff.

V/s.

Shri. Maruti Govind Vadar,
Age- 45 Yrs., Occu. Contractor,
R/o. Basavnagar Road, Siddheshwar
Colony, Near Shri. Durgamata Soudarha
Sahakari Patsanstha Ltd., Kagwad,
Tal. Athani, Dist. Belgaum.

... Defendants

Suit for recovery of amount
and perpetual injunction.

(Judgment)

2 Special Civil Suit No. 57/2019
CNR NO.: MHKO07-002127-2019

Advocate for plaintiff – Shri. B.R. Kumbhar.
Advocate for defendant – Ex-parte.

J U D G M E N T

(Delivered on 24.02.2022)

1. Suit for recovery of amount. According to plaintiff, defendant is plaintiff's maternal uncle's son. They were having good terms. Defendant is a contractor. He is having JCB and stone crusher. He is also Chairman of one society. He used to take contracts from Grampanchayat.

2. According to plaintiff, defendant was in financial crisis and therefore, obtained Rs. 5 lacs from plaintiff as hand loan. Till December 2016, the entire amount of Rs. 5 lacks was paid to defendant by plaintiff. On 12/04/2017 defendant executed notarized agreement in respect of said loan transaction in favour of plaintiff. He also issued various cheques which are mentioned in detail in para No. 6 and 7 of plaint, towards repayment of said amount. Those cheques were dishonored. Plaintiff initiated criminal action as per provisions of Section 138 of N.I. Act before competent court. It is till subjudice before court of Judicial Magistrate, First Class, Kurundwad.

3. According to plaintiff defendant is Chairman of Durgama Soudarha Sahakari Patsanstha. Due to failure of

defendant as a Chairman to repay the deposits of investors in said society, the society initiated complaint u/s. 138 of N.I. Act, before the court of J.M.F.C., Athani. Defendant was convicted in said case. Thus, for depositing amount of fine imposed by court at the time of conviction in said case as well as for refund of societies deposits, defendant is trying to transfer or sale out suit properties.

4. Hence, by way of present suit, plaintiff is seeking recovery of total amount of handloan i.e. Rs. 5 lack paid to defendants alongwith interest @ 18% p.a. Till refund of loan amount. He also prayed that defendant be restrain from creating any third party interest in the properties which are more particularly mentioned in para No.1 of plaint (which are owned and possessed by defendant), till realization of his loan amount.

5. After issuance of suit summons, defendant failed to appear hence suit is proceeded ex-parte against him.

6. Heard learned advocate for plaintiff. Also gone through documents on record. Following points arise for my determination to which I have recorded my findings thereon alongwith detail reasons to follow.

Sr. No.	POINTS	Findings
1.	Whether plaintiff has paid handloan of Rs. 5 lacs to defendant ?	... In the Affirmative
2.	Whether defendant failed to repay the said amount as agreed ?	... In the Affirmative
3.	Whether plaintiff is entitled for recovery of amount claimed ?	... In the Affirmative
4.	Whether plaintiff is entitled for relief of perpetual injunction ?	... In the Negative
5.	What order and decree?	.. As per final order.

REASONS

AS TO POINT NOS. 1 TO 3

7. All above points are interlinked to each other therefore, I have recorded my reasons for all of them in together. The document at Exh.19 is an agreement in respect of handloan entered by defendant in favour of plaintiff. It is notarized document. The contents of same are not denied by defendant. The recitals of said agreement clearly shows that, an amount of Rs. 5 lac was received by him till December-2016. It was received in presence of witnesses on the document. For the refund of said amount he had issued cheques from Exh. 24 to 28. These documents shows that, due to insufficient funds in the account of

defendant, those are return back. Therefore plaintiff issued notice by RPAD vide Exh. 29 demanding refund of loan amount.

8. The further evidence on record i.e. Exh. 21 to 29 and from 31 and 32 shows the details about litigation between plaintiff and defendant before the court of Judicial Magistrate, First Class, Kurundwad in Summary Criminal Case No. 17/2018, filed under Section 138 of Negotiable Instrument Act. In present proceeding, plaintiff from Exh. 16 to 19 submitted original cheques bearing No. 015397 dtd. 11/10/2017, cheque bearing No. 015400 dtd. 6/12/2017, cheque bearing No. 015399 dtd. 14/11/2017 and also original copy of agreement executed by defendant in favour of plaintiff at Exh.19.

9. All the cheques referred above are also referred in Summary Criminal Case No. 17/2018 before the court of J.M.F.C., Kurundwad. On all these cheques signature of defendant is not denied by him. All of them were dishonoured. The endorsement by concern bank authority is there on record. All cheques are issued in favour of plaintiff. They are drawn on Federal Bank, Kagwad Branch. First cheque is for Rs. 2 lacs. Second cheque for Rs. 1,50,000/-, 3rd cheque of Rs. 1,50,000/-. Thus from recitals of Exh.19 and from perusal of cheque from Exh. 16 to 18 it becomes from clear that, defendant has received an amount of Rs. 5 lacs from plaintiff as hand loan. For

repayment of said amount he had entered into agreement Exh.19 and issued above cheques. However, none of them has honored. In spite of sending notice at Exh.31 dtd. 26/12/2017 defendant has not repaid the amount to plaintiff, as agreed. The above evidence of plaintiff remained unchallenged.

10. From above evidence it appears that, defendant has failed to perform his part of contract within time. In spite of taking huge amount from plaintiff, defendant failed to repay it within time. Thus, plaintiff is entitled to recover it. It would not be out of place to mention here that, proceeding u/s. 138 of Negotiable Instrument Act initiated by plaintiff in Summary Criminal Case No. 17/2018 was in respect of penal action for dishonor of cheques. It was not for recovery of amount. In present case plaintiff is entitled to recover his amount with interest. However, considering facts on record and nature of alleged transactions between plaintiff and defendant as per provisions of Section 34, Code of Civil Procedure, plaintiff will not be entitled to recover it at the interest of 18% p.a. He will be entitled to recover it @ 6% p.a. interest from the date of suit till its realization.

11. It is matter of record that, defendant has not perform his part of contract as agreed. Plaintiff was required to initiate criminal proceeding as well as to file present suit for recovery of

his amount. Plaintiff required to make expenses towards these litigations due to the fault of defendant. Hence, he is also entitled for costs of suit. Hence, I answer point No. 1 to 3 in affirmative.

AS TO POINT NO. 4

12. Plaintiff is seeking perpetual injunction against defendant. According to him till realization of his decretal amount defendant be restrained from creating any third party interests in properties owned by defendant mentioned in plaint. However, nothing is brought on record to establish that defendant is likely to alienate or sale those properties with intent to defraud execution of decree if any will be passed in favour of plaintiff. Without establishing any such apprehension, plaintiff will not be entitled for relief of perpetual injunction. Hence, I answer point No.4 in negative and in order to answer point No.5, I proceed to pass following order.

O R D E R

1. Suit is partly decreed with costs.
2. Defendant is directed to repay an amount of Rs. 5 lacs to the plaintiff alongwith interest @ 6% p.a. from the date of suit till its realization within three months from today.
3. Plaintiffs prayer of perpetual injunction is rejected.

(Judgment)

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4. Decree be drawn up accordingly.

Jaysingpur.
Dt.: 24/02/2022.

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.