(2007) 03 BOM CK 0095

In the Bombay High Court

Case No : Civil Revision Application No. 201 of 2004

Arun Shriram Bawaskar — APPELLANT

Vs

Ramdas Vishnupant Kakane — RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Citation : (2007) 4 ALLMR 81 : (2007) 4 BomCR 348

Hon'ble Judges : Pangarkar C.L., J

Bench : Single Bench

Advocate : C.A. Joshi, for the Appellant; A. Chandurkar, for the Respondent

Final Decision : Dismissed

Judgement

Pangarkar C.L., J.—The applicant/original defendant has filed this revision against the judgment and decree passed by the 3rd (ad hoc) Additional District Judge, whereby she allowed the appeal and decreed the suit.

2. The facts giving rise to this revision are as follows -

The plaintiff is a businessman and also works as a Collection agent in the small savings and for the Janata Commercial Co-operative Bank, Akola. The defendant runs a shop named and styled ''Arti Steel Home'' in the old city of Akola. The defendant has a recurring account in the Janata Bank. As a result, the plaintiff knows the defendant since last fifteen years and their relations were very cordial. The plaintiff used to collect everyday an amount from the defendant for being deposited in the Bank. In 1997, the defendant approached the plaintiff and requested him to advance sum of Rs. 19995/-, as he had some financial difficulties. Considering the difficulty of the defendant, the plaintiff paid sum of Rs. 19995/-. The defendant executed a receipt in favour of the plaintiff. Same is also attested by one Purushottam, who is a servant of the defendant. The defendant agreed to pay the loan within six months but did not. The plaintiff, therefore, issued a notice. The defendant refused to accept the notice. The plaintiff, therefore, claims back the amount lent to the defendant along with interest.

3. The defendant resists the suit and admits that he runs a shop known as Arti Steel Home. He denies that he obtained loan from plaintiff on 18.1.1997. He submits that being a collecting agent, the plaintiff always used to come to the shop and obtain signatures of the defendant on various papers in connection with the opening of the account, for the purpose of identification. In 1998, the plaintiff had started construction of the house and, therefore, he demanded sum of Rs. 15000/- from the defendant. The defendant paid Rs. 11,000/- in cash on 2/12/1998 and Rs. 2000/- by way of withdrawal slip. The defendant asked the plaintiff to repay this amount after some time. The plaintiff refused and has filed a false suit against the defendant.

4. The learned judge of the trial Court dismissed the suit as well as the counter claim made by the defendant. On appeal by the plaintiff, the Appellate Court decreed the suit and being aggrieved by that this revision is preferred.

5. I have heard the learned Counsel for the applicant and the non-applicant.

6. It is the contention of the defendant that the plaintiff is a collection agent of the Bank and since the defendant had no time to go to the bank, he used to sign the paper in good faith. It is also his case that he used to sign the papers for opening of the account and for regularisation of the account etc. This is, in fact, the only defence raised by the defendant. The learned judge of the Appellate Court has rightly observed that the present document is on a plain paper and signature is put on a stamp of Re. 1 /-. In banks, printed forms are provided either for withdrawal or for deposit or even for opening of a new account. The defendant being a businessman, who runs a shop, it is difficult to accept his defence that he had put the signature on a blank paper for the purpose of being used in the bank for opening an account. Now, if it was really to be used for the purpose of bank, there was no need of signature of attesting witness. This attesting witness DW 1 Purushottam is servant of defendant himself. He deposes that the signature on the document was obtained for opening the account. As observed earlier, it is a matter of common knowledge again that even account opening forms are printed by the bank and on such printed form alone the accounts are opened and an application on a blank paper is never accepted or entertained. His evidence was, therefore, rightly rejected by the lower Court.

8. It was contended by Shri Joshi, the learned Counsel for the applicant, that there is a large space between the signature and the contents of receipt and the scribe is not examined. Even if there may be some extra space left, that does not necessarily go to show that the signature was obtained on blank paper. It is pertinent to note that the defendant did not send reply to the notice of the plaintiff. An adverse inference, therefore, was rightly drawn by the lower Court. The defendant does not dispute his signature. His defence does not appear to be probable. I, therefore, do not find that the learned judge of the lower Court committed any perversity in appreciating the evidence. I see no merit in the

revision. It is dismissed with costs.

