

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 47 OF 2017

M/s. Rameshkumar Hanjarimal Rathod
Age 70 years, Occ. Business R/o. 283,
E Ward, Gujari, Kolhapur.

... Appellant
(Org. Defendant).

Vs.

Smt. Kantabai Lalchand Gandhi
Age 74 years, Occ. Household R/o.
Matruchhaya, 120-B, Dravid Lane,
Mahadwar Road, Kolhapur.

... Respondent

.....

Mr. Prajakt M. Arjunwadkar a/w Mr. Dhananjay A. Utture, Mr. Ritesh R. Raut and Mr. Ganesh S. Pharakate for the Appellant.

Mr. Tejpal S. Ingale a/w Adv. Vrunali Vilankar for the Respondent.

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CORAM: SANDESH D. PATIL, J.

DATED: 23rd JUNE 2026.

ORAL JUDGMENT :

1. Heard Mr. Arjunwadkar, learned counsel appearing for the Appellant, and Mr. Ingale, learned counsel appearing for the Respondent.

2. The present Second Appeal is directed against the Judgment Decree and Order dated 5th October, 2016 passed by the learned District Judge-2, Kolhapur in Regular Civil Appeal No. 440 of 2012 and the

learned Civil Judge Senior Division, Kolhapur dated 11th July, 2012 in Regular Civil Suit No.298 of 2012. The RCS No. 298 of 2012 was filed by the Plaintiff/ Respondent herein for recovery of Rs. 3,05,045/- from the Defendant at a fluctuating rate of interest. On 1st April, 1993, the Defendant had agreed to give an interest at the rate of 18% p.a. and accordingly, had issued the balance confirmation letter to the Plaintiff in the year 1999. The Plaintiff demanded the amount with interest. The Defendant denied. Therefore, the Civil Suit was filed. The Defendant in his written statement admitted about depositing of the amount with fluctuating rate of interest. He also admitted that he has issued balance confirmation letter to the Plaintiff. The learned trial Court after trial held that when the Suit was within the limitation, the Plaintiff was entitled to the amount with interest. The learned trial Court decreed the suit entirely and granted interest at the rate of 15% p.a. The Appellant had filed the Appeal before the District Judge, Kolhapur. The learned District Judge, Kolhapur dismissed the Appeal preferred by the Plaintiff however, enhanced the rate of interest from 15% p.a. to 18% p.a. Against the concurrent finding of facts, the present Second Appeal is filed.

3. The learned counsel for the Appellant has tendered additional substantial questions of law across the Bar. The principal substantial questions of law argued are as follows:

- i) Whether the Courts below committed an error in entertaining the evidence of the power-of-attorney holder;
- ii) Whether the First Appellate Court could have granted interest at the rate of 18% per annum when the Trial Court had granted interest only at the rate of 15% per annum;
- iii) Whether the suit was within limitation.

4. The learned counsel for the Appellant submitted that both the Courts below committed a serious error in relying upon the evidence of the power-of-attorney holder. According to him, the power-of-attorney holder had no personal knowledge of the transactions in question. He contended that the Plaintiff was fully aware of the facts and circumstances of the case and, therefore, ought to have entered the witness box himself. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in *Man Kaur (Dead) By Lrs. Vs. Hartar Singh Sangha*¹, particularly paragraph 12 thereof.

¹ (2010) 10 SCC 512

5. It was further contended that both the Courts below erred in relying upon the testimony of the power-of-attorney holder despite his alleged lack of personal knowledge of the relevant facts.

6. The learned counsel further submitted that the suit was barred by limitation. According to him, under Article 22 of the Limitation Act, 1963, the period of limitation commences from the date on which a demand is made. He argued that there is a complete absence of any pleading regarding the date on which the demand was made and the date on which such demand was refused.

7. He submitted that both the Courts below failed to consider the true import and scope of Article 22 of the Limitation Act, 1963.

8. The learned counsel further argued that the Trial Court had awarded interest at the rate of 15% per annum. Since the Plaintiff had neither filed an appeal nor preferred any cross-objection, the learned First Appellate Court could not have enhanced the rate of interest to 18% per annum.

9. He further submitted that both the Courts below had improperly appreciated the evidence on record, resulting in perversity of findings. He relied upon the testimony of DW-2-Mr. Bhanudas Patil, a

bank official, who had stated that the amount was credited to the account of the Plaintiff.

10. He also relied upon the evidence of Defendant No. 1 to contend that the entire amount had been repaid.

11. *Per contra*, Mr. Ingale, learned counsel appearing for the Respondent, disputed the aforesaid submissions. He contended that the findings recorded by both the Courts below are proper and based on a correct appreciation of the evidence on record. According to him, no perversity has been demonstrated, and the findings warrant no interference.

12. I have heard the learned counsel appearing for the parties and perused the record.

13. The contention that the power-of-attorney holder could not have been examined as a witness was raised before both the Courts below. Both Courts have concurrently recorded a finding that the power-of-attorney holder had personal knowledge of the facts in issue. The reliance placed by the Appellant on paragraph 12 of the judgment in *Man Kaur (Dead) By Lrs. Vs. Hartar Singh Sangha (supra)* is misplaced.

14. The Hon'ble Supreme Court has held that the testimony of a power-of-attorney holder cannot be relied upon only where such holder has no personal knowledge of the relevant facts. In the present case, a specific suggestion was put to the power-of-attorney holder during cross-examination that he had no personal knowledge of the transactions. The said suggestion was categorically denied.

15. In these circumstances, the judgment in *Man Kaur (Dead) By Lrs. Vs. Hartar Singh Sangha* (supra) is of no assistance to the Appellant.

16. The question as to whether the suit is within limitation has also been considered by both the Courts below. There are categorical findings that the accounts were settled in the year 1994. The Plaintiff pleaded and proved that he demanded payment in the year 1999, and upon the Defendant's refusal to make payment, the suit was instituted in the year 2000. Consequently, the suit was filed well within the prescribed period of limitation. Article 22 of the Limitation Act, 1963, reads as under:

Description of suits	Period of limitation	Time from which period begins to run
22. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable	Three Years	When the demand is made.

17. Thus, the suit is clearly within limitation. The concurrent findings recorded by both the Courts below on the issue of limitation cannot be said to be perverse.

18. The Appellant further contended that the learned First Appellate Court erred in awarding interest at the rate of 18% per annum in the absence of any cross-objection or appeal by the Plaintiff.

19. Mr. Ingale, learned counsel for the Respondent, supported the judgment of the learned First Appellate Court. Upon perusal of the written statement filed by the Defendant, it is evident that the Defendant's case was that he had already repaid the amount to the Plaintiff. The learned First Appellate Court specifically framed Issue No. 2, as recorded at page no. 8 of its judgment, namely, whether the Plaintiff had proved that the Defendant had agreed to pay interest at the rate of 15.4% on the principal amount up to 31.03.1993 and thereafter at the rate of 18% per annum.

20. The learned counsel appearing for the Respondent had specifically argued before the First Appellate Court that the balance confirmation statement at Exhibit 39 reflected the agreed rate of interest as 18% per annum. It was further urged that, although no cross-objection had been filed, the Court ought to exercise its powers under Order XLI Rule 33 of the Code of Civil Procedure, 1908, and enhance the rate of interest accordingly.

21. On a perusal of the judgment of the learned First Appellate Court, it is evident that the Court consciously exercised its powers under Order XLI Rule 33 of the Code of Civil Procedure, 1908. The Respondent had specifically invited the Court to exercise such power, the point for determination was duly framed, and both parties were heard on the question. Therefore, the exercise of such power cannot be said to be arbitrary or perverse.

22. The judgment in *Kamlabai Narayanrao Wagh and another vs. Muktabai wd/o Bajirao Patil (deceased) through L. Rs and others*², relied upon by the learned counsel for the Appellant, is distinguishable on facts and does not apply to the present case. In the instant matter, the Respondent had specifically sought the exercise of powers under

2 2018(6) Mh.L.J.

Order XLI Rule 33 CPC, and the parties were afforded an opportunity to address the Court thereon. Hence, no fault can be found with the exercise of such jurisdiction.

23. The full Bench of the Apex Court in the matter of ***Panna Lal Vs. State of Bombay and others***³ has considered the scope of Order 41 Rule 33 as under;

“12. Even a bare reading of O. 41 Rule 33 is sufficient to convince any one that the wide wording was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondent as "the case may require". In the present case, if there was no impediment in law the High Court could therefore, though allowing the appeal of the State by dismissing the plaintiff's suits against it, give the plaintiff a decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the Section make this position abundantly clear the illustration puts the position beyond argument.

14. We are not, at present advised, prepared to agree that if a party who could have filed a cross-objection under Order 41 Rule 22 of the Code of Civil Procedure has not done so, the Appeal Court can under no circumstances give him relief under the provisions of Order 41 Rule 33 of the Code.....”

3 1963 SCC OnLine SC 212

24. It is not as if the learned District Court does not have any power at all or it is not as if the power exercised by the learned District Court was totally without jurisdiction. The impugned Judgment and Order was passed by the learned District Court on 5th October, 2016. There was power vested in the learned District Court to pass such Order. I do not find it fit to interfere with the same.

25. I find no error in the impugned judgment. No perversity has been demonstrated in the findings recorded by the Courts below. This being a Second Appeal, the jurisdiction of this Court under Section 100 of the Code of Civil Procedure, 1908, is confined to substantial questions of law. No such substantial question of law arises for consideration.

::ORDER::

- a) The Second Appeal stands dismissed with cost.
- b) Interim relief, granted earlier, stands vacated.

(SANDESH D. PATIL, J.)

TALLE
SHUBHAM
ASHOKRAO

Digitally signed
by TALLE
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ASHOKRAO
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