

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

G.A. No. 1 of 2021
In
C.S. No. 163 of 2020

Smt. Urmila Kumari Bothra
Versus
Mr. Ashok Chaudhury

Mr. Varun Kothari
Mr. Raj Kumar Surana
Mr. Abhimonyu Roy
Mr. Jai Kumar Surana
Mr. Dhruv Surana
Ms. V. Nemar

... For the plaintiff.

Mr. Ayan Dutta
Mr. Bimalendu Das
Mr. Shomrik Das

... For the defendant.

Hearing Concluded On : 21.11.2024

Judgment on : 27.11.2024

Krishna Rao, J.:

1. The plaintiff has filed the present application being G.A. No. 1 of 2021 in C.S. No. 163 of 2020 praying for Judgment upon admission and an order of injunction.
2. The plaintiff has filed the suit being C.S. No. 163 of 2020 praying for Decree for a sum of Rs. 42,00,822/- along with interest at the rate of 15% per annum.
3. Mr. Varun Kothari, Learned Advocate representing the plaintiff submits that as per discussion between the plaintiff and the defendant and as per assurance of the defendant, the plaintiff has lent and advanced an amount of Rs. 30,00,000/- to the defendant by way of RTGS on 6th May, 2013. The defendant has paid interest to the plaintiff as and when the same became due and payable.
4. The plaintiff has approached the defendant sometimes in the last week of the month of December, 2017 and verbally demanded to repay the principal amount along with interest accrued thereon till the month of March, 2018. The defendant informed the plaintiff that the defendant is unable to pay the said amount on or before 31st March, 2018 and promised to repay the said amount on or before 31st July, 2018.
5. Mr. Kothari submits that the defendant has paid an amount of Rs. 1,34,260/- being the accrued interest for the period from 1st December, 2017 to 31st March, 2018. He submits that the defendant again

approached the plaintiff and informed the plaintiff that the defendant is unable to pay the amount by 31st July, 2018 and requested the plaintiff to allow the defendant to repay the loan amount by 31st March, 2019. The plaintiff has not accepted the request made by the defendant and thereafter, the defendant had defaulted in paying the principal loan amount along with interest to the plaintiff inspite of several demands made by the plaintiff.

6. The plaintiff has issued legal notice to the defendant on 18th November 2019, calling upon the defendant to pay the principal amount along with interest. The defendant has received the notice on 19th November, 2019 but despite of receipt of the notice, the defendant has neither paid the principal amount or the accrued interest therein and accordingly, the plaintiff has filed the present suit.
7. Mr. Kothari submits that the defendant has admitted that the defendant has received an amount of Rs. 30,00,000/- from the plaintiff as loan and the same was duly transferred from the account of the plaintiff to the account of defendant on 6th May, 2013. He submits that the defendant has paid interest from time to time which was credited in the account of the plaintiff after deducting TDS.
8. Mr. Kothari submits that after receipt of the loan amount by the defendant from the plaintiff, the defendant has utilized the same for the purpose of his business and has promised to repay the said amount on demand.

9. Mr. Kothari submits that the plaintiff has disclosed the details of the immovable property of the defendant as well as the bank accounts of the defendant and submitted that the plaintiff came to know that the defendant is trying to deal with and dispose of the property to frustrate the claim of the plaintiff.

10. Mr. Kothari in support of his submission has relied upon the following judgments:

(i) *Swaika Vanaspati Products Ltd. vs. Canbank Financial Services Ltd.* reported in (2000) 2 Cal LJ 185.

(ii) *Ashvin & Co. vs. Bajaj Tea House* reported in 2010 SCC OnLine Cal 44.

(iii) *Principal Commissioner of Income Tax (Central-1) vs. NRA Iron and Steel Private Limited* reported in (2019) 15 SCC 529.

(iv) *Commissioner of Income Tax, Central – I, Kolkata vs. Maithan International* reported in (2015) 375 ITR 123.

11. Mr. Ayan Dutta, Learned Advocate representing the defendant submits that the suit filed by the plaintiff is not maintainable before this Court as the alleged transaction between the plaintiff and the defendant is commercial in nature and without seeking leave under Section 12A of the Commercial Courts Act, 2015 has filed the same before this Court.

12. Mr. Dutta submits that it is the case of the plaintiff that the plaintiff has lent and advanced amount to the defendant and also claimed interest but the plaintiff has not disclosed that the plaintiff has not obtained license under the Bengal Money Lenders Act, 1940.

13. Mr. Dutta submits that Section 13 of the Bengal Money Lenders Act, 1940, bars this Court to pass any decree or order in favour of any money lender unless the money lender produces license obtained from the competent authority. He submits that the plaintiff never had any license as Money Lender under Section 9 of the Act.

14. Mr. Dutta in support of his submissions relied upon the following judgements:

(i) *J.K. Engineering Pvt. Ltd. vs. ANE Industries Pvt. Ltd., G.A. No. 2522 of 2016 in C.S. No. 213 of 2016.*

(ii) *Astrex Enterprises Pvt. Ltd. vs. Surendra Singh Bengani, G.A. No. 3 of 2022 in C.S. No. 156 of 2020.*

(iii) *Smt. Bhawana Bothra vs. Smt. Sudha Kankaria, G.A. No. 1 of 2021 in C.S. No. 162 of 2020.*

(iv) *Surendra Singh Bengani vs. Sudha Kankaria, G.A. No. 3 of 2023 in C.S. No. 142 of 2021.*

15. The first contention of the defendant is that the suit is commercial in nature but the plaintiff without taking leave under Section 12A of the Commercial Courts Act, 2015 has filed the suit before the Ordinary Original Civil Jurisdiction instead of filing before the Commercial Division. The second contention raised is that the plaintiff has lent and advanced an amount of Rs.30,00,000/- without having any license under the Bengal Money-Lenders Act, 1940 and the third contention is that the defendant knew one Shanti Kumar Surana and had obtained a

small financial accommodation to tide over some business terms which was transferred from the account of the plaintiff to the defendant and the defendant paid in cash to Shanti Kumar Surana on 25th May, 2018.

- 16.** As regard to the contention that the suit is commercial in nature, it is the specific case of the plaintiff that the defendant being known to the plaintiff requested for accommodation of loan of Rs. 30,00,000/- for the purpose of his business and after discussion between the parties, the plaintiff has transferred an amount of Rs. 30,00,000/- in the account of the defendant on 6th May, 2013. The plaintiff has relied upon three documents on the basis of which the plaintiff prays for Judgment upon admission i.e. (i) Details of bank account statement from which an amount of Rs. 30,00,000/- was transferred in the account of the defendant by way of RTGS on 6th May, 2013 and the same was duly withdrawn by the defendant on the same day. (ii) The details of bank account of the plaintiff showing wherein the defendant has deposited an accrued interest amount of Rs. 1,34,260/- after deducting TDS. (iii) TDS Certificate wherein an amount of Rs. 14,918/- is deducted out of the principal amount of Rs. 1,49,178/-. In the affidavit-in-opposition, though the defendant has taken a stand that the defendant has obtained financial accommodation to tide over some business terms from Shanti Kumar Surana but the defendant also admitted that the said amount was transferred from the account of the plaintiff.

In the case of **Ladymoon Towers Private Limited Vs. Mahendra Investment Advisors Private Limited** reported in **2021 SCC Online Cal 4240** wherein the Hon'ble Court held that:

“20. The definition section of the 2015 Act only contemplates a “commercial dispute” and not any other form of dispute where the basis of disagreement between the parties has a non-commercial cause. The gradation of disputes in Section 2(1)(c) taking into account all possible forms of agreements from which a “commercial dispute” may arise, makes it clear that the framers of the statute gave emphasis on the commercial flavour of the transaction as opposed to agreements entered into between parties without a commercial purpose. The qualification of the person being a Merchant, Banker, Trader or Financier imparts an unimpeachable commercial flavour to the transaction and the resulting dispute. The Insolvency and Bankruptcy Code, 2016, for example, defines a dispute from a broader perspective as any suit or arbitration proceedings relating to an existing debt - Section 5(6)(a). The commercial purpose would generally mean a transaction by which a person's commercial or economic interests may be advanced and would result in an economic benefit to that person. It would not include an agreement where profit-making is an incidental outcome of the transaction or may happen by accident. Although, a “hand loan”, for example, is given by a person or entity to another with the expected outcome of the principal sum being returned with interest, the essential commercial flavour in such a loan may be lost by reason of the informal terms under which the money is lent and advanced and the consequent uncertainty which may result therefrom. The requirement of fixing the transaction within the ambit of Section 2(1)(c)(i), namely, between the named classes of persons can be construed being in aid of what the Act intends to cut down, namely, unnecessary wastage of time on ascertaining whether a dispute is a commercial dispute. The exhaustive categories of agreements in 2(1)(c)(i) - (xxii) leaves no doubt that the 2015 Act seeks to bring within its fold an inclusive range of disputes

where the underlying purpose of the transaction is a commercial interest of the parties.”

In the present case it is the case of the plaintiff that the plaintiff has lent and advanced a sum of Rs. 30,00,000/- to the defendant for his business purposes. The defendant made out a case that the money of Shanti Kumar Surana was transferred from the account of the plaintiff to the defendant for the purposes of his business. The plaintiff has admitted in the written notes of argument that the plaintiff is ready and willing to pay penalty, if an opportunity is granted to the plaintiff to obtain license under the Bengal Money-Lenders Act, 1940. From the admission of the plaintiff, it is clear that the plaintiff is into business of money lending and the amount was given to the defendant for business purposes. The defendant also admitted that the said amount was for his business purposes, thus there is no hesitation to hold that the transaction between the plaintiff and the defendant was commercial transaction, this Court has no jurisdiction to entertain the suit filed by the plaintiff.

17. As regard to the applicability of the Bengal Money Lenders Act, 1940, the plaintiff in support of the said contention relied upon two judgments ***Swaika Vanaspati Products Ltd. (Supra)*** and ***Ashvin & Co. (Supra)***. In the written argument, the plaintiff has admitted that the plaintiff is ready and willing to pay the penalty if, an opportunity is granted by this Hon’ble Court.

Section 13 of the Bengal Money Lenders Act, 1940, reads as follows:

“13. Stay of suit when money-lender does not hold licence. – (1) No Court shall pass a decree or order in favour of a money-lender in any suit instituted by a money-lender for the recovery of a loan advanced after the date notified under section 8, or in any suit instituted by a money-lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is satisfied that, at the time or times when the loan or any part thereof was advanced, the money-lender held an effective licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit; if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

(5) In this section, the expression "money-lender" includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the payment of licence fee and penalty which may be ordered to be paid under this section.”

18. In the case of **Ashvin & Co. (Supra)**, the Coordinate Bench of this Court held that:

“The plaintiff has offered, at the outset, to deposit the licence fee or penalty immediately. By way of abundant caution and notwithstanding the fee under Section 10 of the 1940 Act not exceeding

Rs. 100/-, the plaintiff has offered to deposit Rs. 1,000/- to the credit of the suit with the Registrar, Original Side in course of the day. In such view of the matter the objection as to the continuance of the suit or of any order being made in the suit is of no further relevance. Since the plaintiff has voluntarily offered a sum in excess of the licence fee and penalty, such amount should be forwarded by the Registrar, Original Side, to the appropriate authority under the 1940 Act for the same being credited on behalf of the plaintiff for the issuance of a licence under the Act.”

19. In the case of ***Swaika Vanaspati Products Ltd. (Supra)***, the Hon’ble Division Bench of this Court held that:

“3. Even though a plain reading of sub-section (1) of Section 13 clearly suggests that no Court can pass a decree or order in favour of a money lender in any suit instituted by such a money lender for recovery of a loan unless the Court is satisfied that at the time when the loan was advanced, the money lender held an effective licence. There is, thus, a clear embargo upon the Court passing a decree or order in a suit in favour of a money lender/plaintiff who at the time the loan was advanced did not hold an effective licence. What is noteworthy is that the embargo that relates to the passing of the decree has, in point of time, relation to the period when the loan is advanced. Sub-section (2) of Section 13 then creates an exception to the aforesaid embargo by providing that if during the trial of a suit to which sub-section (1) applies, the Court finds that the money lender/plaintiff does not have a licence, the Court shall, before proceeding with the suit, require the money lender/plaintiff to pay penalty which may be three times the licence fee as specified in Section 10 of the Act. As per sub-section (3) of Section 13, if the plaintiff-money lender thus pays the penalty, the Court shall proceed with the suit. This is the plain meaning as we can cull out by a combined reading of sub-sections (1), (2) and (3) of Section 13. In sum and substance, therefore, the position of law as emerges from a combined reading of these three provisions is that even though there is no embargo or prohibition as such about the maintainability or

the filing of a suit with respect to a loan by an unlicensed money lender, the Court in such a suit is precluded from passing a decree, or an order in favour of such a money lender with respect to such a loan if the money lender does not hold a valid licence as per the Act. If, however, during the course of the trial, the Court finds that the money lender does not have a licence, an obligation is cast upon the Court to call upon the plaintiff-money lender to pay penalty which cannot be more than three times the licence fee, as prescribed in Section 10 of the Act. The expression “the Court shall, before proceeding with the suit, require the money lender to pay” clearly suggests that the legislature intended that in every case where the suit has been instituted by an unlicensed money lender, it shall be mandatory for the Court to give an opportunity to the money lender/plaintiff to pay the penalty and, as per the provisions contained in sub-section (3) of the Act, if the money lender avails of this opportunity and pays the penalty, the Court shall proceed with the suit. Undoubtedly, however, if the money lender fails to pay the penalty the Court shall dismiss the suit. The legislature, therefore, very clearly, unequivocally and distinctively provided that if the penalty is not paid, the suit would be dismissed; if the penalty is paid, the Court shall proceed with the suit. The intention was very clear. The suit is maintainable and it can be filed even by an unlicensed money lender but no decree can be passed by a Court in such a suit and that the Court is bound to afford an opportunity to the money lender to cure the defect which had arisen because of the non-licensing of the money lender by paying the penalty which cannot be more than three times the amount of licence fee.”

20. Section 9 of the Bengal Money-Lenders Act, 1940, reads as follows:

“9. Licences- (1) A license shall be valid throughout the whole of [West Bengal] for a period of three years from the date of its issue or until it is cancelled.

(2) On the expiration of the period for which the license was granted or on the cancellation of a license it shall be returned by the money-lender to the Sub-Registrar who issued it.”

21. Considering the above, this Court finds the plaintiff has admitted that the plaintiff is having the business of money lending and the plaintiff is ready and willing to pay the penalty if, an opportunity is granted to the plaintiff. As per Section 9 of the Bengal Money-Lenders Act, 1940, no decree can be passed unless, the plaintiff obtain license, thus this Court cannot pass any decree as prayed for by the plaintiff. The plaint filed by the plaintiff be returned to the plaintiff to be presented before the appropriate Court in accordance with law.

22. Accordingly, **G.A. No. 1 of 2021** is **dismissed**.

(Krishna Rao, J.)