

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA Nos.153/2017, 154/2017 & 155/2017**

% **29th May, 2017**

1. **RSA No.153/2017**

RAJAT JAIN & ANR. Appellants

Through: Mr. Mansimran Singh, Advocate.

versus

NEETA GUPTA Respondent

2. **RSA No.154/2017**

MUKESH JAIN & ANR. Appellants

Through: Mr. Mansimran Singh, Advocate.

versus

A.K. GUPTA (HUF) Respondent

3. **RSA No.155/2017**

MUKESH JAIN & ANR. Appellants

Through: Mr. Mansimran Singh, Advocate.

versus

AYUSHI GUPTA Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. These Regular Second Appeals under Section 100 of the Code of Civil Procedure, 1908 (CPC) arise from identical judgments

passed by the courts below and therefore are being disposed of in terms of this common judgment.

2. The only issue to be decided in these appeals is as to whether the suit for recovery of money filed by the respondent/plaintiff is barred because of Section 3 of the Punjab Registration of Money Lender's Act, 1938 (hereinafter referred to as 'the Act'). As per the said Section 3 of the Act if the respondent/plaintiff has given a loan as his business of giving the loans then recovery of the loan given is prohibited by the Act unless the person who does money lending business is registered under the Act. The first appellate court as per paras 7 to 11 of its impugned judgment has thoroughly, exhaustively and lucidly decided the issue against the appellant/defendant and held that the suit for recovery of money filed by the respondent/plaintiff on account of giving loan to the appellant/defendant is not barred, and these paras 7 to 11 read as under:-

“7. I heard learned Counsels for the parties at great length and have given my considered thought to the rival contentions. Since suit has been dismissed by trial court only on objection of the defendant/respondent that the suit is barred by the provisions of Punjab Registration of Money Lender's Act, 1938. Trial court has not taken into consideration evidence on record for proof of claim of plaintiff. Let us therefore consider, whether this enactment applies to the transactions between the plaintiff and the defendant. The Act has been enacted to regulate the business of money lenders and was effectuated in order to register money lenders for this purpose. The expression ‘money lender’ is statutorily defined under Section 2 Sub-section (9) thus:

“Money lender” means a person, or a firm carrying on the business of advancing loans as defined in this Act, and shall include the legal representatives and the successors-in-interest whether by inheritance;

assignment or otherwise, of such person or firm; provided that nothing in this definition shall apply to-

- (a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money lender together with all his rights and liabilities; provided that such person only-
 - (i) winds up the estate of such money lender;
 - (ii) realizes outstanding loans;
 - (iii) does not renew any existing loan, nor advance any fresh loan;
- (b) a *bona fide* assignment by a money lender of a single loan to anyone other than the wife or husband of such assignor, as the case may be, or any person, who is descended from a common grand-father of the assignor.”

8. It is therefore apparent that this statute would have applicability only in respect of and against persons of firms who are engaged in the business in of advancing loans as defined under the Act. The expression ‘loan’ is defined under Sub-section (8) of Section 2. ‘Loan’ has been defined to mean an advance, whether secured or unsecured, of money or in kind at interest and shall include any transaction which the Court finds to be in substance a loan. Certain exceptions to this definition has been carved out and under Sub-clause (vi) of Sub-section (8) of Section 2 it is specifically stipulated that a loan advanced by a trader to a trader in the regular course of business, in accordance with trade usage shall not be covered under the definition of the loan. The loan as defined in Section 2(8) of the Act of 1938 specifically excludes an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note. In **Amar Singh V. Kuldeep Singh** AIR 1952 Punj. 207, it was held by the Court that a man does not become a money lender merely because he may, upon one or several occasions, lend money to a stranger. There must be a business of money lending and the ‘business’ imports the notion of system, repetition and continuity to be covered under the definition of money lender under this statute.

9. Ld counsel for the appellant has rightly relied upon the judgments of Hon’ble High Court of Delhi in **Atul Anand V. Nanak Food Industries & Ors** IA No.991/04 in CS/OS no.1710/01 decided on 2.8.2006, **Mukesh Gupta V. P.K. Bajaj & Ors.** CS OS 1615/03 decided on 20.11.06, **Laxmi Builders V. Devender Lakra**, CS/OS no.1366/15 decided on 3.3.2016. In all these cases, it has been held that when defendant has neither alleged nor led any evidence to show that plaintiff was engaged in business of money lending, merely because there is business transaction of loan given, does not make the plaintiff as money lender within the meaning of above-said Act.

10. Thus from the authoritative judgments referred above, it is very much clear in the facts of the above-mentioned case that merely because a loan was given to the defendant and interest was charged thereon, that by itself is not sufficient to conclude that plaintiff was running a business of money lending. In the present case also, defendant has simply taken the plea that there is no licence with plaintiff under the above said Act. This plea in itself was not sufficient to attract bar of Section 3 of the Act when it is not even the case of the defendant that plaintiff was engaged into business of money lending. If one or two transactions of money given in loan and

interest charged thereon, this in itself would not attract the provisions of above said Act of 1938 in view of the ratio laid down in Amar Singh's case (supra) and other judgments discussed above.

11. Therefore, I am of the view that trial court was not correct in holding the suit to be barred u/s 3 of Punjab Registration of Money Lenders Act, 1938 specifically when the defendant has not denied taking of the loan, defendant has also not denied paying the interest after deduction of TDS and trial court considering the evidence on record has also given findings on issue no.2 and 3 in favour of plaintiff. Thus, for the reasons discussed above I find that trial court ought to have decreed the suit. Accordingly, findings given by the trial court are being set aside so far as with regard to issue no.1 is concerned and it is held that suit is very much maintainable in Civil Court and not barred U/s 3 of the Act of 1938. Consequently, suit of the plaintiff is decreed for a sum of Rs.2,30,000/- with interest @ 12% p.a. Appeal is accordingly allowed.” (emphasis added)

3. A reading of the aforesaid paras shows that the suit for recovery of money is barred only if the plaintiff is found to be engaged in the business of money lending. The word ‘business’ is very clear because the expression ‘business’ means various continuous transactions for doing a business and not a few transactions of loans given casually. The first appellate court has also rightly relied upon the judgment of the Punjab and Haryana High Court in the case of ***Amar Singh Vs. Kuldeep Singh AIR 1952 Punj. 207*** that a person does not become a money lender merely because of giving casual loans to relations, friends or acquaintances and that merely because interest is charged a person does not become a money lender. In fact money can even be lent to a stranger and yet there will be no business of money lending. In my opinion, the first appellate court has committed no illegality or perversity in holding that giving of casual loans is

definitely not money lending business which is envisaged under the Act.

4. I cannot agree with the argument urged on behalf of the appellants/defendants that since the respondent/plaintiff has stated that interest income is the source of income of the respondent/plaintiff then only because of this reason the respondent/plaintiff is to be held to be engaged in the business of money lending. As already stated above, giving of a few loans is not the same as business of money lending and the suit is barred only when it is filed by a plaintiff who is engaged in the business of money lending and not a plaintiff who has given few loans to relations, friends or even outsiders or strangers for that matter.

5. No substantial question of law arises. Dismissed.

MAY 29, 2017
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VALMIKI J. MEHTA, J