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

\+ **Ex.F.A. No. 21/2017**

% **10th November, 2017**

BAGEESH DUTT MISHRA ..... Appellant
Through: Mr. Shanker, Advocate.

versus

SAROJ DEVI ..... Respondent
Through: Mr. Subhash Chandra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This execution first appeal is filed by the decree holder impugning the order of the executing court dated 7.6.2017 by which the executing court has allowed the objections filed by the present respondent/objector and has dismissed the execution petition filed by the appellant on the ground that the execution petition is barred as per Section 3 of the Punjab Registration of Money Lenders Act, 1938 (hereinafter referred to as 'the Act').

2. It is an undisputed fact that the respondent was the defendant in an Order XXXVII suit filed by the appellant/plaintiff.

This suit no. 42/2014 was decreed as the respondent/defendant failed to file appearance in the Order XXXVII suit. Suit was therefore decreed for Rs.3,37,000/- along with interest at the rate of 8% per annum.

3. Admittedly, this decree dated 12.9.2014 has become final as no challenge has been laid by the respondent/defendant to the order dated 12.9.2014 decreeing the suit either by filing an application under Order XXXVII Rule 4 CPC or by filing an appeal against the order dated 12.9.2014 to a higher court. The only issue to be decided by this Court is that whether taking the judgment/order dated 12.9.2014 as final decreeing the suit for Rs.3,37,000/- along with interest at the rate of 8% per annum, whether the execution petition filed by the appellant/plaintiff/decree holder of the judgment/order dated 12.9.2014 is barred because of Section 3 of the Act.

4. I may also at this stage note that objections decided by the impugned order dated 7.6.2017 are second set of objections filed by the appellant and the earlier objections stood already dismissed by the executing court on 8.1.2016.

5. The relevant paras of the impugned order/judgment holding the execution petition as barred by Section 3 of the Act, are paras 5 to 10, and these paras read as under:-

> "5. Ld. Counsel for the DH at the outset argued that the first set of objections have already been decided by this Court on 08.1.2016 and therefore, these objections are not to be entertained. In the present objections, the JD has raised only a legal objection that the present execution is not maintainable under Section 3 of the Punjab Registration of Money Lenders Act, 1938 and therefore, the objections are maintainable as they do not touch the facts of the case.
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> 6. Section 3 of the said Act provides that " ***Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan; or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this Act, be dismissed, unless the Money-Lender***
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> ***(a) at the time of institution of the suit or presentation of the application for execution;***
>
> ***(b) …….;***
>
> ***(i) is registered; and***
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> ***(ii) holds a valid licence, in such form and manner as may be prescribed ; or………"***
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> 7. Alongwith the objections, the JD has filed proceedings of three different cases instituted by the DH against various persons, namely Manohar Lal, Nobat Singh and Naveen Kumar, for recovery of loan and in all the cases, he alleged that he had extended loans to the defendant/respondent therein of various amounts, on various dates and the present JD is another such person to whom the money was lent by the DH. These proceedings have not been disputed by the DH who has preferred not to file reply. These facts only go on to show that the DH is actively involved in lending money to various persons.
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> 8. Section 2(8) of the said Act defines 'Money-Lender' as a person or a firm carrying on the business of advancing loans as defined in this Act.
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> Section 2(7) of the said Act defines 'Loan' as an advance whether secured or unsecured of money or in kind and at interest and shall include any transaction which the Court finds to be in substance a loan.
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> 9. Although in the proceedings, copies of which have been placed on record and referred to herein above, the DH has averred that he extended friendly loans but his conduct shows that it was a loan within its definition as mentioned herein above. It is, thus clear that the DH had been actively working as a 'Money Lender' without any registration under the Act which was extended to the Union Territory of Delhi, as per Section 1(2) of

> the Act. As already observed, even an execution of a decree relating to a loan is also liable to be dismissed unless the Money-Lender was registered under the Act as a Money-Lender at the time of institution of the suit or presenting of the execution for application.
> 10. In view thereof, the objections to the present execution are accepted and allowed and the present execution is dismissed.
> File be consigned to Record Room."

6. Learned counsel for the respondent/objector argues that objection as to the executability of the decree can be taken under Section 47 CPC read with the relevant part of Section 3 of the Act which specifically provides that there cannot be execution of a decree relating to loan unless the money lender, who is the plaintiff, is registered under the Act.

7. In my opinion, the objections filed by the respondent/judgment debtor and which have been allowed in terms of the impugned order/judgment dated 7.6.2017 are liable to be dismissed and the impugned order/judgment dated 7.6.2017 is liable to be set aside. Reasons are given hereinafter.

8.(i) The first reason for setting aside the impugned order/judgment dated 7.6.2017 is that, admittedly, objections were even earlier filed by the respondent herein but the same were dismissed by the order of the executing court dated 8.1.2016. In law it is not permissible to file objections in tranches because if such procedure is allowed then possibly there will be a few dozen objection petitions filed consecutively after dismissal of earlier petitions. So far as the existence of a bar to filing of a second suit there is a provision under Order II Rule 2 CPC, and in my opinion the spirit of the provision of Order II Rule 2 CPC will apply to filing of second objections after the first objections are dismissed, and accordingly it is held that the present objections which were the second set of objections filed by the respondent/objector were barred in law and thus could not be allowed in terms of the impugned order/judgment.

(ii) I would also like to note that besides the provision of Order 2 Rule 2 CPC what will also apply is the provision of Explanation IV to Section 11 CPC and which provides that any matter which might and ought to have been made a ground of a defence or attack in a former suit should be taken as directly and substantially in issue in such earlier suit. Once again, it is the spirit of the provision of Explanation IV to Section 11 CPC that will apply because even if the objection of bar of Section 3 of the Act was not taken in the first set of objections which have been dismissed then such/this objection is what the respondent/objector might or ought to have been taken in the first objection petition, but is not taken, thereafter taking of such ground/objection is barred by constructive *res judicata* by applying the spirit of the provision of Explanation IV to Section 11 CPC.

9. The next reason for setting aside of the impugned judgment is that the executing court has wrongly relied upon Section 3 of the Act because no doubt this provision provides for objections to be raised in execution of a decree, however, this part of Section 3 of the Act was meant to cover suits which were decreed prior to passing of the Act and not to suits which were instituted after passing of the Act. With respect to suits filed after passing of the Act, this issue of application of Section 3 of the Act is an aspect of merits which has/had to be urged by way of a defence on merits to the suit. Once that is not done then in execution proceedings this objection cannot be taken because an executing court cannot go behind a decree. The language of that part of Section 3 of the Act which talks of objections being filed under Section 3 of the Act in execution proceedings, the same is limited to those situations and circumstances where the suit was decreed prior to passing of the Act and the execution petition was

filed after passing of the Act and therefore the defence under Section 3 of the Act was not available on merits in a suit which was decreed prior to passing of the Act. In view of the above discussion it is clear therefore that the said provision of Section 3 of the Act has been wrongly applied by the executing court against the appellant/decree holder.

10. In view of the above discussion, this appeal is allowed and the impugned judgment/order of the executing court dated 7.6.2017 is set aside. The executing court will now proceed against the judgment debtor/respondent in accordance with law.

11. Appellant can revive the execution petition now by filing a certified copy of the present judgment in the execution proceedings.

NOVEMBER 10, 2017 **VALMIKI J. MEHTA, J**

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