

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 508 OF 2018

Onkar s/o Nandlalji Toshniwal
vs.
M/s. Jankilal Jethmal Gattani thr. Its Proprietor
Nandkishor Jankilalji Gattani

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. Amol Deshpande, counsel for appellant.

CORAM : Manish Pitale J

DATED : 25.09.2019

By this appeal, the appellant (original defendants) has challenged orders passed by the two Courts below wherein the claim raised by the respondent (original plaintiff) has been accepted and decree has been passed against the appellant to repay amounts advanced by the respondent along with 10% interest.

2. The respondent had filed suit against the appellant on the basis that he had advanced amount of Rs.4,00,000/- and Rs.3,00,000/- to the appellant. It was the case of the appellant that he used to take loan from the respondent who was a money lender by pawning receipts that were received upon sale of agricultural products to the Agricultural Produce

Market Committee. The appellant admitted to have taken loan of Rs.4,00,000/- against such receipt as claimed by the respondent, but he disputed having taken loan of amount of Rs.3,00,000/- also claimed by the respondent.

3. The trial Court on appreciation of the oral and documentary evidence on record found that the respondent had been able to establish the fact that even the amount of Rs.3,00,000/- had been advanced to the appellant. The trial Court found that document at Exh.39 was indeed such receipt on the basis of which the appellant used to take such loan amount advanced by the respondent. On the basis of appreciation of the said document and the attendant circumstances, the trial Court came to the conclusion that the respondent had clearly established his case of having advanced amounts of Rs.4,00,000/- and Rs.3,00,00/- to the appellant. On this basis, decree was granted against the appellant and he was directed to pay above stated amount along with interest of 12% p.a.

4. The appellant challenged the said decree passed by the trial Court. The appellate Court concurred with the trial Court holding that the respondent had established the fact that he had advanced said amount to the appellant, but it was found that there was non-compliance of Sections 18 and 19 of the Bombay Money Lenders Act 1946, by

the respondent and accordingly, as per Section 21 of the aforesaid Act, the appellate Court found that the interest component was required to be reduced for non-compliance on Sections 18 and 19 of the said Act. The appellate Court also found that an amount of Rs.1,00,000/- which the appellant had returned to the respondent was required to be taken into consideration and therefore, it was directed that the appellant shall pay an amount of Rs.6,00,000/- with 10% interest to the respondent.

5. The learned counsel for the appellant submitted that basic fact regarding the respondent having advanced amount of Rs.3,00,000/- was not established by evidence and material on record and secondly, that due to non-compliance of Sections 18 and 19 of the aforesaid Act, the reduction of interest under Section 21 of the appellate Court ought to have been higher than the reduction of mere 2%.

6. On the question of whether the respondent had established said fact, a perusal of the judgments and orders passed by the two Courts below would show that the oral and documentary evidence on record was appreciated in the correct perspective by the Courts below to hold in favour of the respondent. The existence of document at Exh.39 and the fact regarding possession of the same with the respondent could not be explained by the appellant and therefore, it was conclusively established that the

said amount of Rs.3,00,000/- was also advanced by the respondent to the appellant. As regards the exercise of power by the appellate Court under Section 21 of the said Act, it was discretion exercised by the appellate Court, which does not give rise to any substantial question of law justifying interference at the hands of this Court.

7. In view of above, it is found that no substantial question of law arises in the present appeal and accordingly, it is dismissed. No order as to costs.

JUDGE

KOLHE