

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

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 1 of 2021

In CS 12 of 2021

Dhruv Surana

Versus

Surendra Singh Bengani.

Mr. Reetobroto Mitra

Mr. Rudrajit Sarkar

Mr. Jai Kumar Sharma

... For the plaintiff/petitioner.

Mr. Rohit Banerjee

Mr. Virendra Singh Bengani

... For the defendant/respondent.

Hearing Concluded On : 02.05.2023

Judgment on : 07.07.2023

Krishna Rao, J.:

1. The plaintiff has filed the present application praying for final judgment upon admission for a sum of Rs. 49,45,548/-. The plaintiff has filed the suit being CS No. 12 of 2021 praying for following reliefs:

- “(a) Decree for a sum of Rs. 49,45,548/- as pleaded in paragraph 15 hereof;
(b) Interim interest and interest upon judgment at the rate of 15 % per annum.”*

- 2.** The plaintiff in his plaint contended that the defendant having long time acquaintance with the plaintiff and sometimes in the last week of October, 2016, the defendant approached the plaintiff for one time financial accommodation of Rs. 35,00,000/- for his business purpose. Pursuant to the discussion between the plaintiff and the defendant, the plaintiff agreed to pay Rs. 35 lakhs to the defendant, as a short time financial accommodation which shall carry interest at the rate of 15% per annum and the defendant shall repay the said loan amount within a period of three months of demand of such refund.
- 3.** The plaintiff relying upon the assurance of the defendant had initially lent in advance an amount of Rs. 25 lakhs to the defendant on October 24, 2016 by way of a cheque being No. 369271 drawn on J and K Bank, Kolkata and the same was received by the defendant through Axis Bank. On receipt of the said amount, the defendant had executed a Promissory Note by confirming the receipt of the amount of Rs. 25 lakhs on October 24, 2016. The plaintiff has paid further an amount of Rs. 10,00,000/- on January 13, 2017 by way of cheque being No. 369276 drawn on J & K Bank, Kolkata and the same was duly received by the defendant through Axis Bank.

4. The defendant had issued confirmation of accounts for the period April 1, 2016 to March 31, 2017 and from April 1, 2017 to March 31, 2018. As promised by the defendant, the defendant has paid interest to the plaintiff from October 24, 2016 to March 31, 2018 and lastly the interest was paid on June 27, 2018 upto March 31, 2018.
5. The defendant had requested the plaintiff that he is facing financial crisis and requested the plaintiff to extend the period of repayment of loan for a further period of one year and promised to return the loan amount on or before March 31, 2019 along with interest but subsequently the defendant defaulted in making payment in spite of several requests made by the plaintiff. The plaintiff had sent notice through an advocate calling upon the defendant for making payment but the defendant failed to make any payment or any part thereof.
6. Mr. Reetobroto Mitra, learned Advocate representing the plaintiff submits that the claim made by the plaintiff is admitted by the defendant which is evident from the following document :
 - a. *Two cheques being No. 369271 dated October 24, 2016 for Rs. 25 lakhs and cheque No. 369276 dated January 13, 2017 for Rs. 10 lakhs total amounting to Rs. 35 lakhs both drawn on J and K Bank, Kolkata which was duly received in the bank of defendant i.e. Axis Bank.*
 - b. *Promissory note issued by the defendant dated October 24, 2016 for an amount of Rs. 25 lakhs.*
 - c. *Confirmation of accounts issued by the defendant to the plaintiff from April 1, 2016 to March 31, 2017 and April 1, 2017 to March 31, 2018 showing receipt of amount of Rs. 35 lakhs and interest payable to the plaintiff.*

7. Mr. Mitra relied upon the following judgments :

- i. (2011) 2 CHN 969 (Sitaram Poddar –vs- Bhagirath Choudhary).*
- ii. 2018 SCC OnLine BOM 19972 (Bipin Vazirani –vs- V. Raheja Design Construction Private Limited & Anr.).*
- iii. AIR 2021 Cal 212 (Prabha Surana –vs- Jaideep Halwasiya).*
- iv. (2020) SCC OnLine Cal 2123 (Ajay Kumar Agarwal – vs- Green Concretex Global Ltd.).*
- v. (2015) 1 CHN 476 (Barnwall Marketing & Ors. –vs- Gee Pee Infotech Pvt. Ltd.).”*

8. Mr. Rohit Benerjee, learned Advocate representing the defendant raised objection with regard to the maintainability of the suit on the ground that the plaintiff does not have any valid license to lend money and thus the suit is barred from proceeding further unless the plaintiff obtains requisite license.

9. Mr. Banerjee submitted that the defendant is engaged in the business of trading in stock-market since 2004 as an authorised person of a Securities and Exchange Board of India (SEBI) registered stock broker namely Eureka Stock and Share Broking Services Limited (Principal Broker). The defendant was introduced in the business by one Shanti Kumar Surana who is the grandson of uterine sister of the defendant. As Shanti Kumar Surana had no registration with any stock exchange, to as a stockbroker and accordingly, since 2005 he is conducting a part of his business of stock trading through the defendant as his client. He submits that through this process several bank accounts were opened

in the name of the defendant from time to time with various banks including Axis Bank according to the whims of Shanti Kumar Surana, who used these accounts, which were in the name of the defendant, to trade in stocks and conduct his business of accommodation loan. He submits that at all material times, the bank accounts were under the control of Shanti Kumar Surana.

- 10.** Mr. Banerjee submits that in the month of May 2010, Shanti Kumar Surana instructed the defendant to open bank account with Axis Bank having account No. 910010017274507 and thus the defendant has opened the said account in his name. He submits that Shanti Kumar Surana used the defendant's account for the purpose of stock trading and providing accommodation loan. The blank cheques and bank RTGS forms signed by the defendant and all relevant documents of the bank account were similarly kept under the custody of Shanti Kumar Surana.
- 11.** Mr. Banerjee submits that the defendant only after receipt of speed post letter dated July 8, 2020, the defendant came to know that the plaintiff was a customer of Shanti Kumar Surana and engaged in the business of accommodation loans with Shanti Kumar Surana. Mr. Banerjee submits that Rs. 25 lakhs received from the plaintiff in the defendant's name on October 24, 2016 out of which a sum of Rs. 10 lakhs taken away by Shanti Kumar Surana on November 4, 2016 by cheque No. 260396 drawn on Axis Bank, Rs. 15 lakhs were given to Jaideep Halwasiya on November 4, 2016 by cheque No. 260395 as per the

instructions of Shanti Kumar Surana Rs. 10 lakhs was received on January 13, 2017 was taken away by Shanti Kumar Surana on January 16, 2017 by issuing a cheque No. 297022 of the defendant's bank account with Axis Bank.

- 12.** Mr. Banerjee submits that there is no admission on the part of the defendant and the defendant specifically deny any transaction between the plaintiff and the defendant and all the transactions have been made between the plaintiff and Shanti Kumar Surana and thus no judgment on admission can be passed.

- 13.** Mr. Banerjee relied upon the following judgments :

- i. (2000) 7 SCC 120 (Uttam Singh Duggal & Co. Ltd. –vs- United Bank of India & Ors.).*
- ii. (2011) 15 SCC 273 (Himani Alloys Limited –vs- Tata Steel Ltd.).*
- iii. (2010) 6 SCC 601 (Jeevan Diesels and Electricals Ltd. –vs- Jasbir Singh Chadha (HUF) & Anr.).*
- iv. 1956 SCR 451 : AIR 1956 SC 593 (Nagubai Ammal & Others –vs- B. Shama Rao & Ors.).*
- v. (2017) 1 SCC 568 (IDBI Trusteeship Services Limited –vs- Hubtown Limited).*
- vi. Unreported judgment G.A. 2522 of 2016 in C.S 213 of 2016 (J.K. Engineering Pvt. Ltd. –vs- ANE Industries Pvt. Ltd.).*
- vii. ILR (1987) Del 524 AIR Delhi 1988 153 (State Bank of India –vs- M/s Midland Industries & Others).*

viii. 1965 SCC OnLine ALL 395 AIR 1966 All 45
*Dr. (Mrs.) Shabbir Fatima & Others –vs- The
 Chancellor, University of Allahabad & Others.*)
 ix. AIR 1962 Cal 325 (*United Bank of India –vs-
 Nederlandsche Standard Bank*).
 x. IA G.A. No. 3 of 2022 in CS No. 156 of 2020
 (*Astrex Enterprise Pvt. Ltd. –vs- Surendra Singh
 Bengani*).”

14. Heard the learned counsel for the respective parties, perused materials on record and the judgments relied by the parties.
15. Before proceeding with the matter on merit this Court is of the view that the point of maintainability raised by the defendant is required to be adjudicated first whether the plaintiff requires licence to lend money under Bengal Money Lenders Act, 1940. As per the case of the plaintiff, the defendant had approached the plaintiff sometimes in the last week of October’ 2016 for one time financial accommodation of Rs. 35,00,000/- and accordingly the plaintiff had provided short time financial accommodation to the defendant along with interest @ 15% per annum.
16. In the case of **Sitaram Poddar (supra)**, the Hon’ble Division Bench of this Court held that :

“17. Therefore, one or two isolated or occasional acts of lending money will not constitute a money-lending business; instances of occasional lending of money even at a remunerative rate of interest are not sufficient to constitute business of money-lending. Every loan is a debt, but every debt is not loan. Thus, by laying stress on the business trait of the

lending, the Bengal Money-Lenders Act, 1940 contemplates a professional money-lender and it is in relation to such a professional money-lender that the provisions as to a licensee and registrations are applicable.”

In the case of **Bipin Vazarani (Supra)**, the Bombay High Court held that :

“7. In that decision I considered the settled law on the subject including amendments to the Money Lending Act and the interpretation of the expressions ‘loan’, ‘money lender’, ‘business of money lending’, and, in particular how such a defence could be raised. In paragraph 36 of the Base Industries Group decision I culled out propositions that seemed to me to emerge from that discussion:

“36. From this discussion, the following propositions emerge:

- (a) Not every loan is axiomatically a money-lending transaction for the purposes of the 1946 or the 2014 Acts. There is no such presumption in law.*
- (b) It is doing of the ‘business of money-lending’ that attracts the provisions of the statute. In interpreting the phrase, the correct emphasis is on the word ‘business’, not ‘money-lending’. It is the word ‘business’, and not the expression ‘money-lending’, that is determinative. Simply put, every instance of lending money is not money-lending. Not every lender is a Shylock.*
- (c) To constitute ‘business’, a single isolated instance does not, and even several isolated stray instances do not, constitute ‘the business of money-lending’. To be engaged in the ‘business of money-lending’, the activity must be systematic, regular, repetitive, and continuous, and must generate an appreciable revenue. The fact that the borrower is a stranger to the lender does not on its own make the latter a ‘money-lender’.*
- (d) A loan recovery action is not barred merely because there is a loan. It has to be shown that the loan was part of ‘the business of money-lending’.*

(e) A plaintiff seeking a recovery of a loan is not required to show that his suit is not barred by the Money Lenders Act. It is always for the defendant who puts up money-lending as a defence to show that the transaction is forbidden by the Money Lenders Act.”

In the case of **Prabha Surana (Supra)**, the Coordinate Bench of this Court held that:

“4. I have considered the materials on record in the course of submissions of learned counsel appearing for the parties. Before dealing with the factual contentions, the point of maintainability must first be addressed. Section 13 of The Bengal Money-Lenders Act, 1940, prohibits a court from passing a decree or order in favour of a money-lender in a suit filed by a money-lender for the recovery of a loan advanced, unless the court is satisfied that the moneylender held an effective licence at the time of granting the loan or advancing any part thereof. The other parts of Section 13 are not relevant for the purposes of this application. Section 2(12) of the said Act defines a “loan” as an advance, whether on any monetary terms or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note as provided under sub-clause (12)(e). Under Section 13 of the Negotiable Instruments Act, a “negotiable instrument” has been defined as a promissory note, bill of exchange or cheque payable either to order or to bearer. A conjoint reading of the provisions under The Bengal Money-Lenders Act and the Negotiable Instruments Act makes it evident that a loan advanced by way of a cheque (within the definition of a negotiable instrument) would fall outside the purview of a “loan” under The Bengal Money-Lenders Act and hence outside Section 13 of the same which bars a court from passing a decree/order in favour of a money-lender in a suit filed for recovery of a loan advanced unless the court is satisfied that the money-lender held an

effective licence on the date when the loan was advanced. The part with regard to the requirement of a money lender holding an effective licence becomes irrelevant since the loan given by the petitioner to the respondent in the present case clearly falls outside the scope of the Act by reason of the loan being advanced by the petitioner to the respondent by way of five cheques drawn on the concerned bank at different points of time.”

In the present case, it is the specific case of the plaintiff that the defendant is having long time acquaintance with the plaintiff and accordingly the defendant had approached plaintiff for a one-time financial accommodation of Rs. 35,00,000/- for his business purpose with the assurance that he will repay the same within a period of three months of the demand of such refund by the plaintiff. It is not the case of the defendant that the plaintiff is engaged in moneylending business. The defendant simply has taken a ground that the plaintiff does not have a valid license to proceed with the nature of recovery of loan but the fact remains that no evidence has been brought by the defendant to establish that the plaintiff is involved in moneylending and has also lend money to other persons.

In view of the above, this Court is of the view that the preliminary objection raised by the defendant is not sustainable as the plaintiff is not involved in any moneylending business and has paid the said amount for one time as per the request made by the defendant for the purpose of his business.

- 17.** Now the question, whether, there is an admission on the part of the defendant and this Court can pass final Judgment and Decree on admission.
- 18.** The specific case made by the defendant that the defendant is engaged in the business of trading in stock-market since 2004 and is an authorised person of Securities and Exchange Board of India. The defendant was introduced in the business by one Shanti Kumar Surana, who is the grandson of the uterine sister of the defendant. As Shanti Kumar Surana had no registration with any stock exchange, to act as stockbroker and thus since 2005, Shanti Kumar Surana has been conducting a part of his business of stock trading of the defendant as his client and through this process separate bank accounts were opened in the name of the defendant from time to time in various banks according to the whims of Shanti Kumar Surana used those accounts which were in the name of the defendant.
- 19.** The plaintiff relied upon the cheques issued in the name of the defendant amounting to Rs. 25 lakhs and Rs. 10 lakhs and the same are duly confirmed by the defendant by executing a promissory note and issuing confirmation of accounts. In paragraph 3 (xii) of the affidavit in opposition, the defendant stated as follows :

“In fact, the said Rs. 25,00,000/- received from the plaintiff in the defendants’ name on 24.10.2016 out of which a sum of Rs. 10,00,000/- was taken away by Shanti Kumar Surana on 04.11.2016 by cheque No. 260396 drawn on Axis Bank, Rs. 15,00,000/- were given to Jaideep Halwasiya on 04.11.2016 by cheque

no. 260395 as per the instruction of Shanti Kumar Surana and Rs. 10,00,000/- received on 13.01.2017 were taken away also by Shanti Kumar Surana on 16.01.2017 by issuing a cheque No. 297022 of the defendant's said bank account with Axis Bank."

20. The defendant had also admitted with regard to receipt of the notice issued on July 8, 2020 wherein the plaintiff has called for defendant for repayment of loan amount. The defendant has not denied with regard to existence of the account of the Axis Bank in the name of the defendant and the amount paid by the plaintiff received in the said account. The only defence taken by the defendant that though the account is in the name of defendant but the same is being operated by Shanti Kumar Surana.

21. Order XII, Rule 6 of the Code of Civil Procedure, 1908 reads as follows:

"6. Judgment on admissions. (1) *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*

(2) *Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

22. In the case of ***Ajay Kumar Agarwal (Supra)***, the Coordinate Bench of this Court held that:

“33. The defence sought to be raised in the present proceeding, in my opinion, is incongruous, vague, nebulous and convoluted. The defence is moon shine. In my opinion, no triable issue has been raised by the respondent to the extent of the amount covered by the cheques furnished by the respondent to the petitioner which were dishonoured. It will be a travesty of justice to relegate such claim of the petitioner to trial. The object of Order XII Rule 6 of the Code of Civil Procedure is to enable a party to obtain a speedy judgment at least to the extent of the admission made by the other party. The admission may be in the pleading or otherwise. A pre-suit admission would also suffice. In the present case, I have no reason to believe that the balance confirmations were procured by the petitioner dishonestly. The confirmation statements clearly amount to admission. The cheques furnished by the respondent to the petitioner also amount to admission of liability to the extent of the aggregate amount of the cheques.

34. If frivolous defences are allowed to stand in the way of the petitioner obtaining expeditious judgment to the extent of the admission made by the respondent, the purpose of Order XII Rule 6 would be defeated. Recalcitrant and unscrupulous parties to a litigation often raise imaginary and meritless disputes and defences only with a view to protracting the litigation and delaying grant of relief to the other party. This cannot be encouraged.”

In the case of **Barnwal Marketing (Supra)**, the Coordinate Bench of this Court held that:

“17. The case sought to be made out by the respondent in its affidavit-in-opposition is not credible. There was no reason or occasion for the respondent to furnish security to the petitioner in the form of the two cheques which were subsequently dishonoured. The respondent has, in my opinion, concocted a story which is not acceptable. This is unfortunate but nothing new. We have often come across stories being churned out in a desperate attempt to raise a defence to a

claim. The present case seems to be one of such examples.”

In the present case also the case made out by the defendant in the affidavit-in-opposition is not credible as the defendant has admitted about the account recorded in his name and the amount received by the defendant in his account. If the defendant has admitted that the account was in the name of the defendant and the defendant has received the said amount and the defendant had also not denied with regard to promissory note as well as the account confirmation.

- 23.** This Court has gone through the judgments relied by the defendant but finds that the facts of the present case and the facts of the judgments relied by the defendants are distinguishable.
- 24.** In view of the above, this Court finds that the defence as set out by the defendant is moonshine and there is no triable issues have been raised by the defendant and thus it is not proper to relegate the suit for trial.
- 25.** For the reasons mentioned above **prayer (a) of G.A 1 of 2021** is thus **allowed**. Consequently **CS No. 12 of 2021** is also **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)