

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

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 1 of 2020

In CS 71 of 2020

Kanchan Devi Kochar

Versus

Jaideep Halwasiya.

Mr. Amritam Mandal

Mr. Anil Choudhury

Ms. Ananya Chakraborty

Ms. Shipra Naskar

... For the plaintiff.

Mr. Reetobroto Mitra

Mr. A.P Gomes

... For the defendant.

Heard On : 10.04.2023 & 01.05.2023

Judgment on : 07.07.2023

Krishna Rao, J.:

1. The plaintiff has filed the present application being GA No. 1 of 2020 for Judgment and Decree on admission and allied prayers in connection with CS No. 71 of 2020.
2. The Plaintiff has filed a suit for Decree for an amount of Rs. 64,71,312/-along with interest at the rate of 15% per annum.
3. The plaintiff has filed the present application on the contention that the defendant has admitted the claim of the plaintiff and there is to defence of the defendant to go for trial.
4. The plaintiff contended that sometimes in the month of June' 2016, the defendant through a broker had approached the plaintiff for financial assistance for a sum of Rs. 50 lakhs and the defendant also agreed to pay interest at the rate of 15% per annum on the advance. As per the request of the defendant, it was agreed between the parties that the plaintiff would lend an amount of Rs. 50 lakhs to the defendant which would carry interest at the rate of 15% per annum and the loan would be repayable on demand. It was further agreed that the defendant would pay interest on the principal amount on every four months.
5. As agreed by the parties, on July 2, 2016, the plaintiff had paid Rs. 50 lakhs to the defendant by transferring the said amount by way of RTGS. On receipt of the said amount, the defendant had paid interest till 31st March, 2018 on April 3, 2018. The interest paid to the plaintiff on the said amount of Rs. 50 lakhs has deducted tax at source. The defendant had issued balance confirmation on April 1, 2017 in favour

of the plaintiff up to March 31, 2017. Thereafter the defendant neglected to refund the said principal amount along with interest or any part thereof to the plaintiff. The plaintiff made request to the defendant for refund of the said amount but the defendant has not paid any further amount and accordingly on September 4, 2019, the plaintiff had issued the letter calling the defendant for payment of entire loan together with interest and by a reply dated September 24, 2019, the defendant has denied his liability.

6. The plaintiff by filing this application praying for Judgment and Decree on admission by relying upon the document i.e. the amount transferred by the plaintiff to the defendant on July 2, 2016 by way of RTGS, the interest paid by the defendant to the plaintiff till March 31, 2018 on April 3, 2018, interest paid from time to time till March 31, 2018, TDS deducted on the interest amount paid to the plaintiff and confirmation of account from April 1, 2016 to March 31, 2018.
7. Mr. Amritam Mondal, learned Advocate representing the plaintiff submits that from the above mentioned documents the defendant had admitted the claim of the plaintiff and there is no good defence to send the suit for trial and as such the plaintiff is entitled to get Judgment and Decree on admission. Mr. Mandal relied upon the judgment reported in **(2021) SCC Online Cal 2480 (Prabha Surana vs. Jaideep Halwasiya)** and submitted that plaintiff is required to be protected when the defendant prima facie appear to have admitted their liability and in spite of acknowledgement of liability did not even repay

the interest which according to own admission of the defendant were to be regularly paid.

8. *Per contra*, Mr. Reetobroto Mitra, learned Advocate representing the defendant submitted that in early 2019, the defendant had made payment of entire principal sum of Rs. 50 lakhs in several tranches to the person assigned by the plaintiff, her broker as indicated in her letter of demand. He submits that the person assigned by the plaintiff was not known to the defendant and the entire payment was made to the said person in cash who was admitted to be the financial broker of the plaintiff as admitted by the plaintiff in the instant application as well as in her notice dated September 4, 2019.
9. Mr. Mitra submitted that immediately on receipt of the notice of the plaintiff, the defendant had replied by intimating that the defendant had already paid the entire amount to the broker of the plaintiff. He submits that as the entire amount has been paid and thus there is no liability on the part of the defendant to pay any amount to the plaintiff as claimed by the plaintiff.
10. Mr. Mitra has also raised an objection with regard to the limitation and submitted that the transaction was made in the year 2016 and lastly the payment was made in March' 2017 but the suit was filed in the month of August' 2020 and thus the suit filed by the plaintiff is barred by limitation.

11. Mr. Mitra submitted that in the present proceeding, no Decree can be passed in view of Section 8 and Section 13 of the West Bengal Money Lenders Act, 1940 as the petitioner is carrying Money Lending business without any license. In this connection, Mr. Mitra relied upon Judgment reported in **2000 CWN 1130 (Swaika Vanaspati Products Limited -vs- Canbank Financial Services Ltd.)**.
12. Mr. Mitra submitted that the discretion of the Court by passing Judgment and Decree on admission cannot be exercised to deny the available right of the defendant to contest the claim. He submits that admissions would be categorically conscious and a deliberate act of the party making it. He relied upon the judgment reported in **(2011) 15 SCC 273 (Himani Alloys Limited -vs- Tata Steel Limited)** and **(2015) 9 SCC 287 (S.M Asif -vs- Virender Kumar Bajaj)**.
13. Mr. Mitra submitted that once the claim of the plaintiff has been denied on the written statement being filed with the defendant, the same cannot be said to be admitted. He relied upon the judgment reported in **AIR 2006 Delhi 320 (Cosmo Ferrites Ltd -vs- M/s Universal Commercial Corporation and Ors.)**.
14. Heard the learned counsel for the respective parties, perused the materials on record and the judgment relied by the parties. 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.”

- 15.** The specific case of the plaintiff that in the month of June’ 2016, the defendant through the broker approached the plaintiff for financial assistance of Rs. 50 lakhs with interest at the rate of 15% per annum. The defendant has raised an issue that the suit cannot be decreed as the plaintiff is running money laundering business without any license. The defendant has relied upon Section 8 and Section 13 of The Bengal Money Lenders Act, 1940.
- 16.** Section 8 and Section 13 of The Bengal Money Lenders Act, 1940 read as follows :

“8. Money-lending business not to be carried on except under licence. -After such date not less than six months after the commencement of this Act as the [State] Government shall, by notification in the Official Gazette, appoint in this behalf, no money-lender shall carry on the business of money-lending unless he holds an effective licence.

Explanation.- An effective licence for the purposes of this Act comprises a licence issued to a person who is not disqualified for holding a licence.

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."

In support of his contention, Mr. Mitra relied upon the judgment of

Swaika Vanaspati products Limited (supra) and submitted that:

"The position of law as emerges from a combined reading of these three provisions in Sub-section (1), (2), and (3) is that even though there is no embargo or prohibition as such about the maintainability or the filling of 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 license as per the Act. If however

have a license, 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 license 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. ”

Mr. Mitra relied upon the judgment in the case of **Angel’s consultants Private Limited (supra)** and submitted that the Hon’ble Court has relied upon the judgment reported in the case of **Swaika Vanaspati Products Limited** and held that :

“Now having followed the ratio decided in the case of Swaika Vanaspati Products Ltd. (supra), the Plaintiff company must be given the opportunity to obtain the license under Section 13 of the B.M.L. Act and to pay statutory penalty under sub-section (3) of the said section. And the plaintiff company is, therefore, directed to avail of that opportunity within a reasonable period of time and after having obtained such certificate on payment of statutory penalty withing a period of three months from the date the plaintiff company may proceed with the suit failing which the suit shall stand dismissed.”

17. Similar question was cropped of before the Hon’ble Division Bench of this Court in the case reported in **2011 SCC Online Cal 845 (Sitaram Poddar -vs- Bhagirath Choudhary)** and the Hon’ble Court had framed the following issue:

“7. The short point in this appeal is whether the learned Trial Judge was justified in dismissing the suit for money lent and advanced on the ground that the lender had no registration and licence as moneylender and that before institution of the suit no notice was issued to the defendants giving notice for one month?”

The Hon’ble Court held as follows:

“8. Section 2(9) of the Bengal Money-Lenders Act, 1940, defines a lender as a person, who advances a loan and includes a money-lender. Section 2(13) of the said Act defines a money-lender. Money-lender means a person, who carries on business of money-lending in West Bengal or who has a place of such business in West Bengal, and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872. Under section 2(14) of the said Act, money-lending business and business of money lending mean the business of advancing loans either solely or in conjunction with any other business.

9. The Patna High Court while interpreting the provisions of section 4 of the Bihar Money-Lenders (Regulation and Transaction) Act, 1939 holds that the business of money-lending imports a notion of system, repetition and continuity, and that is a test of determining whether the plaintiff is a professional money-lender. Occasional loans to relatives, friends or acquaintances do not make the lender a professional money-lender. There must be more than occasional and disconnected loans to justify a finding that the plaintiff is a professional money-lender (Bhutnath Kumar v. Nilkantha Narayan Singh, reported in AIR 1949 Patna 400 and Sanwarmal Agarwalla v. Benoy Krishna Mukherjee, reported in AIR 1970 Patna 167).

10. The Rajasthan High Court in Gaurishanker v. Magharam, reported in AIR 1974 Rajasthan 238 while interpreting section 2(10) of the Rajasthan Money-Lenders Act, 1964, holds that an element of continuity and habit is essential to constitute the exercise of a profession or business. It is the professional money-lender and not the casual money-lender, who alone is contemplated by section 2(10) of the said Act.

11. *The Madhya Pradesh High Court in Parmanand Jain v. Firm Babulal Rajendra Kumar Jain*, reported in AIR 1976 Madhya Pradesh 187 holds that money-lender means a person, who in the regular course of business advances a loan. The words “in the regular course of business” signify a certain degree of system and continuity of transactions. Every person, who has advanced a loan, therefore, is not a money-lender.

12. *In Binapani Roja v. Rabindranath Sarkar*, reported in AIR 1959 Calcutta 213, this Court holds that the word ‘loans’ in section 2(14) of the Bengal Money-lenders Act, is in plural. Therefore, in order to establish that the plaintiff is carrying on business of money-lending, it must be proved that he has lent money on more than one occasion.

13. While interpreting the provisions of sub-sections (9), (13) and (14) of the Bengal Money-Lenders Act, 1940, this Court in *Satyanarayan Kamal Kumar v. Birendra Pro Singh*, reported in AIR 1979 Calcutta 197 holds that money-lender is a person, who carries on business of money-lending in a regular course of business, but mere lender is not so.

14. Supreme Court of India in *Gajanan v. Seth Brindaban*, reported in AIR 1970 SC 2007 while interpreting the provisions of C.P. and Berar Money-Lenders Act, 1934, holds that money-lender means a person, who in the regular course of business advances a loan and excludes isolated transactions of money-lending.

15. Supreme Court of India in *Ka IcildaWallang v. U. LokeridraSuiam (dead) by Lrs.*, reported in AIR 1987 SC 2047 while interpreting the provisions of Assam Money-Lenders Act, 1934, holds that few disconnected and isolated transactions would not make the plaintiff a person engaged regularly in money-lending business.

16. Supreme Court of India in *P. Vaikunta Shenoy & company v. V.P. Had Sharma*, reported in AIR 2008 SC 416, while interpreting the provisions of Karnataka Money-Lenders Act, 1962, holds that the purpose of the Act was to prevent the malpractice of oppression by money-lenders to take advantage of people's poverty. In the money-lending business, the object of money-lender is to earn interest of the loan he has advanced. Therefore, a purposive interpretation has to be given to the definition of money-lenders.

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 Vazirani** reported in **2018 SCC online Bom 1972**, wherein the Bombay High Court held that:

“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 that discussion, the following propositions emerge:

- (a) Not every loan is axiomatically a money-lending transaction for the purposes of the 1946 of 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 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 and 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 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)**, reported in **2021 SCC Online**

Cal 2480, 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.”

18. In the present case, it is admitted case of the parties that the defendant through a broker approached the plaintiff for financial assistance of Rs. 50 lakhs and accordingly the plaintiff had agreed to pay the said amount @ 15% per annum. Neither it is the case of the defendant that the defendant is running the money lending business nor it is pleaded in the affidavit-in-opposition that the plaintiff is running the business of money lending. It is the specific case of the defendant that only one occasion, the defendant had borrowed the amount from the plaintiff through the broker and subsequently the defendant had paid the said amount in cash through the broker. Thus, in view of the judgments reported in the cases of **Sitaram Poddar**, **Bipin Vazirani and Prabha Surana (supra)**, the Bengal Money Lenders Act, 1940 is not applicable in the present case against the plaintiff.
19. Now the question, whether, there is a clear admission which can be acted upon by passing judgment on admission ?
20. The defendant in his affidavit-in-opposition has taken the following defence :

“Before dealing with and/or controverting the allegations contained in the said petition, I set out hereunder the true and correct factual matrix of the case, which would warrant dismissal of the petition without any order:-

- (i) The financial accommodation made by the petitioner was not because the respondent did not have liquidity in its bank accounts.*
- (ii) On the aforesaid amount of financial accommodation, the respondent has paid interest from time to time, the last of such payments have been made on March 16, 2017, which fact has been unequivocally admitted by the petitioner.*
- (iii) As a matter of fact in early 2019 the respondent had made payments of the entire principal sum of Rs. 50 Lakh in several tranches to the person assigned by the petitioner, her broker as indicated in her letter of demand.*
- (iv) The person assigned by the petitioner was not known to the respondent and the entire payment was made to the said person is cash, who was admitted to be her financial broker in her demand notice dated September 4, 2019.*
- (v) In the circumstances aforesaid, the respondent was perplexed to receive a demand notice from the petitioner on September 4, 2019. The respondent immediately to the same disowning all liability as claimed by the petitioner by its letter of September 24, 2019.*
- (vi) The entire transaction falls within the realm of a money lending transaction and recovery thereof is barred on the factual count that the entire payment has already been made by the defendant to the petitioner which has been received by the petitioner through her duly authorised agent, Shanti Kumar Surana and on the legal count that the petitioner for recovery for such money cannot be thrust unless the parameters under West Bengal Money Lenders Act, 1940 are complied with. The petitioner does not have a money lending license.*

- (vii) *Since the entire money along with interest had already been paid back by the respondent to the petitioner through her authorized person, albeit, in cash, the petitioner with an intent to extract unjust enrichment, has instituted this suit.*
- (viii) *Further, the claim is barred by limitation, being a transaction of June 2016, that the last acknowledgment coming in the form of payment of interest made lastly in March 2017. The suit being filed in August 2020, the same is barred by limitation. "*

As regard the license for lending money have been decided in preceding paragraphs. The defendant has not denied that the plaintiff has lend money in advance to the defendant but the defendant has taken defence that he has paid the interest as well as the principal amount in total in early 2019 to the broker of the petitioner in cash and on receipt of the notice, immediately, the defendant has replied to the plaintiff and the defendant has also taken the plea of limitation.

- 21.** The defence taken by the defendant with regard to repayment of amount to the plaintiff through the broker in cash i.e. Rs. 50 lakhs is without any documentary evidence and the defendant had also mentioned that the said broker was not known to the defendant. This part of the defence of the defendant has no defence or the defence set up is illusory or sham or practically moonshine. As regard the point of limitation raised by the defendant, the defendant himself has admitted that in the early' 2019, the defendant has made entire principal amount of Rs. 50 lakhs in several tranches to the person assigned by the plaintiff and the suit is filed by the plaintiff in the year 2020 and in

the month of April, 2018 the last interest was paid thus the point of limitation raised by the defendant is also a frivolous and vexatious defence.

22. In view of the above, this Court finds that the defendant has not raised any triable issue for sending the matter for trial and thus the plaintiff is entitled to get a Decree and Judgment on admission in terms of prayer (a) of GA 1 of 2020.

23. GA No. 1 of 2020 with **CS 71 of 2020** is disposed of. Decree be drawn accordingly.

(Krishna Rao, J.)

Later :

Counsel for the defendant prays for stay of operation of the order. Counsel for the plaintiff raised objection. Considered the submission made by the parties. Prayer is refused.

(Krishna Rao, J.)