

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

Present:

The Hon'ble Justice Krishna Rao

**G.A. No. 2 of 2023
In
CS No. 173 of 2022**

Sajjan Kumar Agarwala

Versus

M/s. Stellar & Anr.

Mr. Rajarshi Dutta
Mr. Sarbajit Mukherjee
Mr. A.P. Agarwalla

... For the plaintiff.

Mr. Jishnu Chowdhury
Mr. Ritoban Sarkar
Mr. Abhidipto Tarafder
Mr. Barnik Ghosh

... For the defendants.

Hearing Concluded On : 21.08.2024

Judgment on : 11.09.2024

Krishna Rao, J.:

1. The plaintiff has filed the present application being G.A. No. 2 of 2023 in C.S. No. 173 of 2022 under Chapter XIII A of the Original Side Rules of this Court for passing of the final judgment for recovery of amount of Rs.36,97,917/- along with interest at the rate of 15% per annum against the defendants.
2. Upon request of the defendants, the plaintiff agreed to provide loan of Rs.25,00,000/- to the defendants and the defendants agreed to repay the said amount within 92 days along with interest at the rate of 15% per annum. The plaintiff has transferred an amount of Rs.25,00,000/- by way of RTGS and on receipt of the said amount from the plaintiff, the defendant no.2 has executed a money receipt on 11th July, 2018.
3. The defendants paid a sum of Rs. 85,069/- to the plaintiff on 14th November, 2018 as interest upto 10th October, 2018 after deduction of TDS of Rs. 9452/-. As per request of defendants, the time to repayment of loan was extended from time to time but the defendants have paid further interest of Rs. 47,157/- on 12th December, 2018, Rs. 83,219/- on 20th March, 2019 and Rs. 28,664/- on 30th March, 2019 i.e. upto 31st March, 2019 after deduction of TDS.
4. On 1st April, 2020, the defendants issued Cheque No. 001888 for Rs. 25,00,000/- in favour of the plaintiff. The plaintiff has presented the said cheque on 19th June, 2020 but the same was dishonored with the endorsement "Funds Insufficient". The plaintiff has issued notice to the

defendants on 13th July, 2020, calling upon the defendants to pay the amount along with interest. On receipt of notice, the defendants have sent reply denying the claim of the plaintiff.

5. The defendants say that the application filed by the plaintiff is barred by limitation and this Court has no jurisdiction as cause of action arose outside of the jurisdiction of this Court. They submit that the claim made by the plaintiff is barred by limitation as the alleged transaction was made on 11th July, 2018 and the plaintiff has filed suit in the year 2022.
6. The defendants say that this Court would be stopped from passing a decree unless the Court satisfied that at the time when the loan was advanced, the plaintiff had an effective license under the West Bengal Money Lenders Act, 1940. The defendants further say that the plaintiff has filed the suit without any balance sheet, bank statement or any other documents to prove the case of the plaintiff.
7. The plaintiff has paid Rs. 25,00,000/- by transferring the said amount from the account of the plaintiff i.e. State Bank of Bikaner and Jaipur, now State Bank of India, Park Mansion, Park Street, Kolkata – 700 016 which is situated within the jurisdiction of this Court and subsequently shifted to 12B Park Street, Kolkata – 700071 also within the jurisdiction of this Court. The defendants have also paid interest to the plaintiff till 31st March, 2019 in the same bank account of the plaintiff within the jurisdiction of this Court.

8. As per transactions made between the plaintiff and the defendant, this Court finds that the plaintiff has transferred the amount from the State Bank of India, 12B Park Street, Kolkata within the jurisdiction of this Court and thus part cause of action arose within the jurisdiction of this Court.
9. It is the case of the plaintiff that as per request of the defendants, the plaintiff has paid the said amount as loan to the defendants. In the plaint nowhere it is mentioned that the plaintiff has provided the said loan amount to the defendants during business transaction and the defendants have not produced any evidence to show that the defendants have taken the same amount from the plaintiff during the course of business or the transaction between the plaintiff and the defendants is connected with business transaction.
10. In the case of ***Ladymoon Towers Private Limited –vs- Mahendra Investment Advisors Private Limited*** reported in **2021 SCC OnLine Cal 4240**, the Coordinate Bench of this Court held that:

“20. The definition section of the 2015 Act only contemplates a “commercial dispute” and not any other form of dispute where the basis of disagreement between the parties has a non-commercial cause. The gradation of disputes in Section 2(1)(c) taking into account all possible forms of agreements from which a “commercial dispute” may arise, makes it clear that the framers of the statute gave emphasis on the commercial flavour of the transaction as opposed to agreements entered into between parties without a commercial purpose. The qualification of the person being a Merchant, Banker, Trader or Financier imparts an unimpeachable commercial flavour to the

transaction and the resulting dispute. The Insolvency and Bankruptcy Code, 2016, for example, defines a dispute from a broader perspective as any suit or arbitration proceedings relating to an existing debt - Section 5(6)(a). The commercial purpose would generally mean a transaction by which a person's commercial or economic interests may be advanced and would result in an economic benefit to that person. It would not include an agreement where profit-making is an incidental outcome of the transaction or may happen by accident. Although, a "hand loan", for example, is given by a person or entity to another with the expected outcome of the principal sum being returned with interest, the essential commercial flavour in such a loan may be lost by reason of the informal terms under which the money is lent and advanced and the consequent uncertainty which may result therefrom. The requirement of fixing the transaction within the ambit of Section 2(1)(c)(i), namely, between the named classes of persons can be construed being in aid of what the Act intends to cut down, namely, unnecessary wastage of time on ascertaining whether a dispute is a commercial dispute. The exhaustive categories of agreements in 2(1)(c)(i) - (xxii) leaves no doubt that the 2015 Act seeks to bring within its fold an inclusive range of disputes where the underlying purpose of the transaction is a commercial interest of the parties.

21. *Since it has been found that none of the criteria mentioned in Section 2(1)(c)(i) of the Act has been met by the factual conspectus in the present case, C.S.99 of 2020 is directed to be de-listed from the Commercial Division and transferred to the appropriate list governing the hearing of ordinary suits. Although the defendant has failed to act in accordance with the timelines prescribed under The Commercial Courts Act, 2015 and now seeks to take advantage of the comparatively liberal time frames of a regular suit, the defendant cannot be pinned down to the rigours of the 2015 Act if it is found that the suit does not arise out of a commercial dispute under the provisions of the 2015 Act."*

In the present case also though the defendants have raised objection that the suit filed by the plaintiff is commercial in nature but has not satisfied this Court under which provision of Section 2(1)(c) of the Commercial Courts Act, 2015 attracted. The plaintiff has made out a simple case of money lent and advance. The defendants have not brought any evidence on record to say that the suit is of commercial in nature and the transactions between the plaintiff and the defendants are in connection with any business.

11. The plaintiff has provided loan of Rs. 25,00,000/- to the defendants as per the request of defendants on 11th July, 2018 and on receipt of the said amount, the defendant no. 2 executed an acknowledgement. The defendants have paid interest till 31st March, 2019 by depositing in the account of the plaintiff and on 1st April, 2020, the defendants issued cheque of Rs.25,00,000/- which was dishonored on 19th June, 2020 and the plaintiff has filed the suit in the month of July, 2022 thus it cannot be said that the suit is barred by limitation.
12. The defendants have taken the plea that the plaintiff is not having license under the West Bengal Money Lenders Act, 1940 and no decree can be passed. The defendants have relied upon the judgment in the case of ***Swaika Vanaspati Products Ltd. -vs- Canbank Financial Services Ltd.*** reported in ***2000 SCC OnLine Cal 234*** wherein the Division Bench of this Court held that:

“3. Even though a plain reading of sub-section (1) of Section 13 clearly suggests that no

Court can pass a decree or order in favour of a money lender in any suit instituted by such a money lender for recovery of a loan unless the Court is satisfied that at the time when the loan was advanced, the money lender held an effective licence. There is, thus, a clear embargo upon the Court passing a decree or order in a suit in favour of a money lender/plaintiff who at the time the loan was advanced did not hold an effective licence. What is noteworthy is that the embargo that relates to the passing of the decree has, in point of time, relation to the period when the loan is advanced. Sub-section (2) of Section 13 then creates an exception to the aforesaid embargo by providing that if during the trial of a suit to which sub-section (1) applies, the Court finds that the money lender/plaintiff does not have a licence, the Court shall, before proceeding with the suit, require the money lender/plaintiff to pay penalty which may be three times the licence fee as specified in Section 10 of the Act. As per sub-section (3) of Section 13, if the plaintiff-money lender thus pays the penalty, the Court shall proceed with the suit. This is the plain meaning as we can cull out by a combined reading of sub-sections (1), (2) and (3) of Section 13. In sum and substance, therefore, the position of law as emerges from a combined reading of these three provisions is that even though there is no embargo or prohibition as such about the maintainability or the filing of a 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 licence as per the Act. If, however, during the course of the trial, the Court finds that the money lender does not have a licence, 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 licence 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. The legislature, therefore, very clearly, unequivocally and distinctively provided that if the penalty is not paid, the suit would be dismissed; if the penalty is paid, the Court shall proceed with the suit. The intention was very clear. The suit is maintainable and it can be filed even by an unlicensed money lender but no decree can be passed by a Court in such a suit and that the Court is bound to afford an opportunity to the money lender to cure the defect which had arisen because of the non-licensing of the money lender by paying the penalty which cannot be more than three times the amount of licence fee. In this back drop, therefore, let us consider the observations, reasoning and ratio of the learned Single Judge of this Court in the case of Shib Kumar Todi v. Amal Chand Champalal (supra).

4. *In para 38 of the judgment in Shib Kumar Todi, the learned Single Judge took the view that if a loan was given by a money lender when the money lender did not hold a licence, the loan was to never ripen into a decree in Bengal. This observation appears to be the foundation of the ratio that he ultimately laid down. To understand the basis of this ratio, the observations of the learned Single Judge in paras 39, 40, 41 and 42 of the judgment may also be quoted. These read:—*

“39. The point then arises, as to what is the use of the plaintiff being permitted to pay penalty, within the meaning of sub-section (2) of Section 13, if the plaintiff can, upon payment of such penalty, only proceed with the suit, but has to step short of having a decree passed in his favour?

40. The other point, of at least equal, and, in my opinion, of greater perplexity is, that it is difficult to follow, as to what the legislature was intending to achieve, by enacting a detailed Act, as to control of money lending business, if it merely intended that, prior to obtaining a decree, the money lender will have

to pay three times the licence fee which, according to the present rate, work out to only Rs. 75/-. No money lender granting any substantial loan would bother to obtain any licence if the only penalty were that he would have to pay seventy five rupees prior to obtaining a decree.

41. I am, therefore, faced with two unsavoury choices. I must either construe sub-sections (2) and (3) of Section 13 as being of practically no value to the plaintiff, or I must alternatively construe the entire Act to be of no value of the regulating (3) would enable the plaintiff to proceed, but proceed fruitlessly. In the other line of construction, the Government would be permitted to make rules and regulations, regarding money lending business, but only to be defeated, by any money lender who is prepared to pay a penalty of seventy five rupees, prior to obtaining a decree in any suit of his against a borrower.

42. To speak very plainly, I would rather make a nonsense of sub-sections (2) and (3) of Section 13, than make a nonsense of the entire scheme of the Act.

5. *After we have very carefully gone through the aforesaid observations of the learned Single Judge in Shib Kumar Todi, and on the basis of the abstract proposition of law laid down by him in para 38 of the judgment, we feel that the learned Single Judge perhaps based his observations by reading sub-section (1) of Section 13 of the Act in total isolation and that he did not properly appreciate and take into account clear legislative intent as duly incorporated in sub-sections (2) and (3). The learned Single Judge, according to us, thus did not reconcile the legislative policy as contained in sub-sections (2) and (3) with the embargo as contained in sub-section (1). According to us, the legislature by placing the embargo in sub-section (1) about the Court not being competent to pass a decree in a suit filed by an unlicensed money lender, at the same time expressed its clear intent that the embargo can be lifted and the unlicensed*

*money lender can be brought at par with a licenced money lender by providing that the Court shall call upon such unlicenced money lender-plaintiff to pay the penalty and that if the penalty is paid, the suit shall proceed. The language employed in sub-section (3) is indeed crystal clear. It says that if the penalty is not paid the suit shall be dismissed. It also says that if the penalty is paid the Court shall proceed with the suit. If, in the suit (which sub-section (3) says will proceed), the Court ultimately cannot pass a decree in favour of the plaintiff, what is the idea of the Court proceeding with the suit? Proceeding with the suit cannot be a mere ritual, an empty formality. Whenever the Court proceeds with a suit, ultimately the result, the logical and has to be the passing of a decree. Therefore, when the legislature provides that if the penalty is paid, the Court shall proceed with the suit, it is based on a clear intent that not only will the suit be maintainable, it shall also proceed and that, ultimately depending upon its merits, the decree shall be passed. With utmost respect we say, hold and declare that the ratio laid down by the learned Single Judge of this Court in *Shib Kumar Todi v. Amal Chand Champalal* is not a good law and that it is required to be overruled. We, accordingly, declare that the ratio in *Shib Kumar Todi's* case as being contrary to the provisions of law as contained in Section 13 of the Act and overrule the aforesaid judgment.*

13. The plaintiff has relied upon judgment in the case of **Sitaram Poddar**

vs. Bhagirath Choudhary reported in **2011 SCC OnLine Cal 845**

wherein the another Division Bench of this Court held that:

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

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 Icilda Wallang v. U. Lokeridra Suiam (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.”

14. In the case of ***Swaika Vanaspati (Supra)***, the Hon’ble Division Bench has declared the ratio of in the case of ***Shib Kumar Todi –vs- Amal Chand Champalal*** reported in ***1992 SCC OnLine Cal 165*** wherein the Learned Single Judge of this Court held that:

“38. The mere material consideration for a construction of s. 13 would, in my opinion, be that no decree can be passed in favour of a plaintiff money lender unless he held an effective licence at the time of loan. Once that time is passed, and the loan has been given, the difficulty is no longer curable. The loan shall never ripen into a decree in Bengal. The prohibition of s. 13(1) is clear and wholly effective.”

In the case of ***Shib Kumar Todi (supra)***, the Learned Single Judge came to the conclusion that the plaintiff was a money-lender within the meaning of the West Bengal Money Lenders Act, 1940 when he advanced the loan in the year 1985. In the said case, the plaintiff has admitted that there might be one or two other cases of his having granted loan.

The Hon’ble Division Bench in the case of ***Swaika Vanaspati Products Ltd. (supra)*** has not considered the point whether one or two isolation transactions can be said to be the business of money lending.

In the case of ***Sitaram Poddar (supra)***, the Honble Division Bench of this Court considering several orders passed by various High Courts and Judgment passed by the Hon'ble Supreme Court in the case of ***Ka Icilda Wallang -vs- U. Lokeridra Suiam (Dead) by Legal Heirs*** reported in ***AIR 1987 SC 2047*** and in the case of ***P. Vaikunta Shenoy & Company -vs- V.P. Had Sharma*** reported in ***AIR 2008 SC 416*** held that 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.

15. In the present case, it is the specific case of the plaintiff that as per the request of the defendants, the plaintiff has lent and advance amount of Rs. 25,00,000/- to the defendants. The defendants have not produced any evidence that the plaintiff is running the business of money lending. In affidavit-in-opposition of the present application also it is not the contention of the defendants that the plaintiff has lent and advances of any money to some other persons also.
16. In support of the case, the plaintiff has relied upon account statements of State Bank of India from 29th June, 2018 to 15th December, 2018 wherein it reveals that on 11th July, 2018, the plaintiff has transferred an amount of Rs. 25,00,000/- in the account of defendants. Corroborating the same, the defendant no. 2 has acknowledged the receipt of Rs.25,00,000/- and paid interest at the rate of 15% per annum. In the TDS Certificate also it reveals that TDS have been

deducted while paying interest of the said amount by the defendants to the plaintiff. In reply to the legal notice dated 13th July, 2020, the defendants have admitted in paragraph 6 which reads as follows: *“Based on such misrepresentation, our client was coerced and mislead into availing your client’s facilities.”* The defendants have also issued cheque of Rs. 25,00,000/- to the plaintiff which was dishonored but the defendants failed to explain about the said cheque.

- 17.** This Court also finds that the defendants have filed an application being G.A. No. 1 of 2023 praying for extension of time to file written statement. By an order dated 13th June, 2023, disposed of the said application by allowing the defendants to file written statement by 23rd June, 2023, subject to payment of costs. While disposing of the said application, this Court made it clear that filing of written statement will not stand in the way of the plaintiff in taking out an application for summary judgment.
- 18.** Considering the above, this Court finds that the defendants do not have defence and the defence which the defendants have raised is sham and moonshine.
- 19.** In view of the above, the plaintiff is entitled to get decree of Rs. 25,00,000/- along with interest at the rate of 15 % per annum from 1st April, 2019, till the realization of the decretal amount.

20. G.A. No. 2 of 2023 is **disposed of**. Accordingly, **C.S. No. 173 of 2022** is also **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)