IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Sugato Majumdar

CS/162/2020
SMT. BHAVYA BOTHRA
VS
SMT. SUDHA KANKARIA

For the Plaintiff	:	Mr. Aritra Basu, Adv. Mr. Ratul Das, Adv. Mr. Dwip Raj Basu, Adv. Mr. Avijit Kar, Adv.
For the Defendant	:	Mr. Subrata Goswami, Adv. Mr. Debrup Bhattacharjee, Adv.
Hearing concluded on	:	05/12/2025
Judgment on	**:**	**17/12/2025**

Sugato Majumdar, J.:

This is a suit for recovery of money.

The sum and substance of the plaint case may be summarized as follows:

a) The Plaintiff is a house-wife and over a period of time has earned and accumulated funds.

b) The Defendant, having long-time acquaintance with the Plaintiff and sought for one time loan accommodation in the first week of the month of April 2014 for business purpose.

c) Pursuant to discussions between the parties herein they agreed on 09/04/2014 that the Plaintiff shall provide a loan of Rs.25,00,000/- as a short time financial accommodation. The Defendant agreed to pay interest at a rate of 15% per annum from time to time. The loan should be repayable within three months of the demand of such refund by the Plaintiff.

d) The agreement arose at 87, Lenin Sarani, Kolkata-700013 within jurisdiction of this Court.

e) Pursuant to the aforesaid agreement the Plaintiff transferred the loan amount by electronic transfer through RTGS on 09/04/2014.

f) The Plaintiff demanded repayment in the last week of the month of December, 2016 along with accrued interest by 31/03/2017. The Defendant requested extension of time to repay till 30/11/2017 and promised to repay the same. The Plaintiff accepted the proposal and extended time for repayment till 30/11/2017. The Defendant thereafter paid interests from 01/04/2017 to 31/07/2017. Again the Defendant approached the Plaintiff in the month of October 2017 and requested for further extension of time till 31st March, 2018. The Plaintiff refused to accept the same and requested the defendant to return the principal along with accrued interest for the period 01/08/2017 to 30/11/2017. In spite of the request of the Plaintiff, the Defendant paid interest for the period 01/08/2017 to 30/11/2017 by cheque, but failed to repay the principal amount.

g) The Defendant however failed to repay the aforesaid loan with interest particulars of the demand of the Plaintiff is given below:

PARTICULARS

PRINCIPAL AMOUNT		25,00,000.00
INTEREST	AMOUNT IN RS.	
01.12.2017 to 31.03.2018 (121 days)	1,24,316.00	
01.04.2018 to 31.03.2019 (365 days)	3,75,000.00	
01.04.2019 to 31.03.2020 (365 days)	3,75,000.00	
01.04.2020 to 30.11.2020 (244 days)	2,50,684.00	11,25,000.00
TOTAL		36,25,000.00

h) The Plaintiff, on being constrained, instituted the instant suit praying for recovery of a sum of Rs.36,25,000/- with interest at a rate of 15% per annum.

The Defendant appeared in the suit and contested the same by filing written statement. Specific pleas taken in the written statement may be summarized as follows:

a) The suit is instituted for recovery of money alleged to have been paid on account of the loan to the Defendant. The Plaintiff in affidavit-in-reply in connection with GA 1 of 2021 specifically stated that she has no licence or had no licence under The Bengal Money Lenders Act, 1940 and she is taking steps to obtain such licence. Till date, no such licence has been disclosed. In view of Section 13 of The Bengal Money Lenders Act, 1940 the suit cannot be proceeded with and decree cannot be passed.

b) The Defendant denied any acquaintance with the Plaintiff.

c) It was averred Para. 11 that there was no agreement between the parties for payment of interest, as such, the question of paying any interest for the period 01/04/2017 to 31/07/2017 does not and cannot arise at all. The payments were all along made on account of principle since there was no agreement for payment of interest.

d) The Defendant denied all other allegations contained in the plaint.

On the basis of rival pleadings, the following issues were framed:

1. *Whether the Plaintiff had advanced a loan for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) to the Defendant herein for three months?*

2. *Whether the said loan was repayable along with interest at the rate of 15% per annum?*

3. *Whether the Plaintiff is entitled to claim a sum Rs.36,25,000/- (Rupees Thirty Six Lakh Twenty Five Thousand Only) being the principal and the interest calculated as on the date of filing of the suit?*

4. *Whether the Plaintiff is entitled to reliefs as claimed for in the plaint?*

5. *Whether the claim of the Plaintiff is barred by the laws of limitation?*

6. *Whether the present suit is barred under the provision of Bengal Money Lenders Act, 1940?*

7. *Whether the Plaintiff granted and the Defendant accepted a financial accommodation to the tune of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) or not and if yes under what terms?*

8. *Whether there was any agreement between the parties with regard to the payment of interest on the purported loan or not if yes at what rate and on what dates, such interest was paid?*

9. *Whether the confirmation of accounts dated 1st April, 2015 and 1st April, 2016 is signed by the defendant or not?*

The Plaintiff adduced oral as well as documentary evidences. The Defendant did not adduce any evidence.

<u>Issue Nos. 5 & 6:-</u>

Issue Nos. 5 & 6 are taken up together. Since these two issues are existential to the present suit.

The Defendant pleaded and argued that the suit is barred under the provisions of The Bengal Money Lenders Act, 1940. The Defendant heavily depended on some statement as well as observation made by the Co-Ordinate Bench that the Defendant applied for money lending licence. Although Defendant did not adduce any evidence, oral evidence of the Plaintiff shows that she advanced the loan to some of other persons. In course of cross-examination she stated that on recommendation of her father she advanced the loan and that her father knew the Defendant very well. This, by itself does not mean that she had a money lending business. She might had venture into such business subsequently for which she might had later applied for licence but there is no evidence that at the point of time when the loan was given she was engaged in money lending business. Section 2(13) of The Bengal Money Lenders Act, 1940 defines money lender as a person who carries on the business of money lending in the West Bengal and who have such a place of business in West Bengal and includes a pawnee as defined in Section 172 of the Contract Act. Section 2(14) defines money lending business as the business of advancing loan either solely or in connection with any other business. In **Gajanan & Ors. Vs. Seth Brindaban [(1970) 2 SCC 360],** the Supreme Court of India observed that from the scheme of the provisions of the Act it is evident that for a person to be a money lender he must, in the regular course of business, advances a loan. The expression "money lender" exclude isolated transactions of money lending. There must have been the habit of advancing loans to persons as a matter of regular business or in habit of lending money in a systematic way. There is no evidence that the Plaintiff was engaged into money lending business. There is no pleading of the Defendant in this respect except the plea that the Plaintiff has no licence. Therefore, it cannot be concluded that the Plaintiff was engaged in money lending business at the time of advancing the instant loan and for that reason absence of licence under The Bengal Money Lenders Act, 1940 is fetal to the suit.

So far as, the question of limitation is concerned. Ext. C the statement of Axis Bank Account shows and conforms the plea that on 10/01/2018 payment was made by cheque no. 264438 for a sum of Rs.1,25,342/-. This document, namely, Ext. C is not under challenged. In course of cross-examination, it was rather conformed that the Plaintiff is one of the account holder as mentioned in Ext. C. This part payment was made on 10/01/2018 and the suit was filed on 17th December, 2020 within the period of limitation. Therefore, the suit is not part by law of limitation.

These two issues are decided in favour of the Plaintiff.

<u>Issue Nos. 1, 2, 3, 4, 7, 8, 9:-</u>

All these issues are taken up together since all are interrelated.

Ext. F is a statement of accounts of the Plaintiff from 01/04/2014 to 30/11/2020. This statement, although exhibited, was not signed. This statement shows that Rs.25,00,000/- was debited on 09/04/2014 to Axis Bank Ltd. Ext. B is a statement of accounts dated 01/04/2015. This statement was signed by the Defendant. It shows that on 09/04/2014 a sum of Rs.25,00,000/- was credited to the account of the Defendant. This statement also shows that on 02/08/2014, 30/11/2014 and on 31/03/2015 interests were paid and the said interests were credited to the account of the Plaintiff. In course of cross-examination, question was put to the Plaintiff that the signatures of the Defendant on Ext. B were taken at the time of disbursement of loan to which the Plaintiff disagreed. This question (Q.91) tacitly and impliedly admits of the fact that the signatures were genuine and those of the Defendant. This conclusion can be safely arrived at, in view of the fact that there is no allegation of forgery of signature of the Defendant. There is no evidence at all on behalf of the Defendant to disprove the evidence adduced by the Plaintiff. The Plaintiff also produced statement of accounts issued by the bank corroborating monetary transactions as pleaded and as deposed. Oral as wells as documentary evidences adduced by the Plaintiff establish that the loan amount of Rs.25,00,000/- was advanced to the Defendant.

The Learned Counsel for the Defendant argued that interest would be payable only from the date of default. The Learned Counsel invited my attention to the Question No. 102 put to the Plaintiff in course of cross-examination when he stated that at the time of lending money she did not intend to take interest. Subsequently, when defaulted, the borrower Sudha Kankaria offered to pay interest for default in repayment in time.

The Learned Counsel for the Plaintiff opposed this argument and submitted that payment of interest was a condition of providing loan.

In the written statement plea was taken that there was no question of paying any interest for the period 01/04/2017 to 31/07/2017.

The Plaintiff being the PW-1 stated in course of cross-examination that at the time of lending money she did not intend to take interest. Subsequently when defaulted, the borrower, namely, the Defendant offered to pay interest for her default in repayment in time. There is no written agreement as observed above. Ext. B, being the confirmation of accounts, signed by the Defendant authenticity of which has been accepted as stated above, shows that the Defendant paid interests on 02/08/2014, 30/11/2014 and on 31/03/2015. The Defendant, by conduct, establish and accept the stipulation of payment of interests and waived objections on that. The Defendant, once paid interest, is estopped from raising any objection.

It is the plaint case that the Plaintiff asked for repayment in the last week of the month of December 2016 from the Defendant and the said principal amount of Rs.25,00,000/- along with accrued interest thereon should be paid by 31st March, 2017. Repayment schedule was further postponed by the Plaintiff at the request of Defendant till 30th November, 2017. It is also in the plaint that in the last week of October 2017 the Defendant sought for further extension of time to repay till 31st March, 2018 which the Plaintiff refused. Initial extension was up to 30th November, 2017. Further extension was refused. Therefore, the default occurred on and from 1st December, 2017. Ext. B is the document relied on by the Plaintiff. This is a statement of confirmation of accounts from April 2014 to 31st March, 2015 signed by the Defendant which contains admission of payment of interest on loan which had been paid on 2nd August, 2014, 30th November, 2014 and 31st March, 2015. This document although does not reflect and up to date statement of accounts yet it shows and establish that the Defendant agreed to pay interest not on default, as deposed by the Plaintiff but along with the principal. This documentary evidence should prevail over the oral testimony of the Plaintiff of course.

As discussed above and on appreciation of evidence this Court comes to the conclusion that the Plaintiff advanced loan of Rs.25,00,000/- to the Defendant repayable with interest at a rate of 15% per annum and the Plaintiff, therefore, is entitled to the decree prayed for.

All the issues are decided accordingly.

It is ordered, therefore, that the Plaintiff do get a decree of Rs.36,25,000/- the Defendant was also liable to pay interest at a rate of 15 per cent per annum on the principal amount from the date of institution of the suit till repayment.

The Defendant shall repay the money within three months from the drawing up of a decree, in case of default of which, the Defendant shall be liable to pay additional penal interest at a rate of 3 per cent per annum, over and above, the said rate of 15 per cent per annum.

Let the decree be drawn up.

The instant suit is disposed of accordingly.

(Sugato Majumdar. J.)