

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3896 OF 2025

1. Gopallal Madanlal Mour	}	
Aged 64 years, of Mumbai, Indian	}	
Inhabitant, residing at 501-502,	}	
Krishna Alankar, Tejpal Scheme,	}	
Road No. 5, Vile Parle (E), Mumbai-	}	
400 057.	}	Petitioner (Orig. Defendant)

V/s.

Motilal Laxmichand Salecha HUF,	}	
Proprietor of M/s Mala Investment,	}	
through its Karta Motilal	}	
Laxmichand Salecha, Occu.	}	
Business, Hindu, Indian Inhabitant,	}	
having its address at 44/2, Suresh	}	
Bhavan, Road No. 6, Jawahar	}	
Nagar, Goregaon (W), Mumbai-400	}	
062.	}	Respondent (Orig. Plaintiff)

WITH

WRIT PETITION NO. 3900 OF 2025

1. Ashadevi Gopallal Mour	}	
Aged 61 years, of Mumbai, Indian	}	
Inhabitant, residing at 501-502,	}	
Krishna Alankar, Tejpal Scheme,	}	
Road No. 5, Vile Parle (E), Mumbai-	}	
400 057.	}	Petitioner (Orig. Defendant)

V/s.

Motilal Laxmichand Salecha HUF, }
 Proprietor of M/s Mala Investment, }
 through its Karta Motilal }
 Laxmichand Salecha, Occu. }
 Business, Hindu, Indian Inhabitant, }
 having its address at 44/2, Suresh }
 Bhavan, Road No. 6, Jawahar }
 Nagar, Goregaon (W), Mumbai-400 }
 062.

....Respondent
 (Orig. Plaintiff)

**WITH
 WRIT PETITION NO. 4255 OF 2025**

1. Sanjay Gopallal Mour }
 Aged 42 years, of Mumbai, Indian }
 Inhabitant, residing at 501-502, }
 Krishna Alankar, Tejpal Scheme, }
 Road No. 5, Vile Parle (E), Mumbai- }
 400 057. }

.....Petitioner
 (Orig. Defendant)

V/s.

Motilal Laxmichand Salecha HUF, }
 Proprietor of M/s Mala Investment, }
 through its Karta Motilal }
 Laxmichand Salecha, Occu. }
 Business, Hindu, Indian Inhabitant, }
 having its address at 44/2, Suresh }
 Bhavan, Road No. 6, Jawahar }
 Nagar, Goregaon (W), Mumbai-400 }
 062.

....Respondent
 (Orig. Plaintiff)

 Mr. Girish Kedia with Krushan Kedia, for the petitioners.

Mr. Anil R. Mishra with Rihen Mishra, for the respondents.

CORAM : N.J. JAMADAR, J.

DATED : 15TH APRIL, 2025

JUDGMENT :

1. Rule.
2. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally.
3. The challenge in these petitions is to an order dated 29th November 2024, whereby the learned Judge, City Civil Court rejected the Notices of Motion taken out by the petitioners / defendants for rejection of the plaint under the Provisions of Order VII Rule 1 (d) of the Code of Civil Procedure, 1908, on the ground that the suits were barred by the provisions of the Maharashtra Money Lending (Regulation) Act, 2014 ('Money Lending Act, 2014).
4. Since these petitions raise identical questions of fact and law, the petitions were heard together and are being decided by this common judgment.
5. The facts in Writ Petition No. 3896 of 2025 are noted as a lead petition.
6. The plaintiff is the Karta of Motilal Laxmichand Salecha, HUF and proprietor of M/s Mala Investment. The plaintiff had known the defendant who deals in the business of Marble. The plaintiff claimed to have advanced friendly loans to the defendant, over a

period of time, and as of 31st March 2025, the outstanding amount towards the friendly loan was Rs.85,87,208/- The defendant had confirmed the balance by executing balance confirmation letters at the end of every financial year.

7. On 17th February 2016, the plaintiff addressed a notice to the defendant demanding the repayment of the outstanding amount, alongwith interest @ 12% pa. As the defendant denied the liability vide reply dated 5th March 2016 and raised false contentions, the plaintiff was constrained to institute the summary suit for recovery of the outstanding amount alongwith interest @ 12% p.a. from the date of institution of the suit till payment and realisation.

8. In Writ Petition No. 3900 of 2025, the Petitioner - defendant is the wife of the Petitioner in Writ Petition No. 3896 of 2025. The facts are identical with the change that as of 31st March 2015, the outstanding amount was allegedly Rs. 46,50,000/-.

9. In Writ Petition No. 4255 of 2025, the Petitioner - defendant is the son of the petitioner in Writ Petition No. 3896 of 2025. In the said case, the plaintiff claimed that, as of 31st March 2015, the total outstanding loan amount was Rs. 67,25,830.

10. The defendants took out Notices of Motion, in the

respective suits, seeking rejection of the plaint on the ground that the transactions in question were of illegal money lending and the plaintiff did not have a valid money lending licence when the loans were advanced, commencing from the year 2011. Secondly, the summary suit to recover the amount of loan to which provisions of the Money Lending Act, 2014 applied, is not maintainable.

11. The Notices of Motion were resisted by the plaintiff.

12. By the impugned order, the learned Judge City Civil Court, was persuaded to reject the Notices of Motion observing, inter alia, that at the stage of consideration for rejection of the plaint under Order VII Rule 11 of the Code, the Court was only required to consider the averments in the plaint and not evidence. The issues which were sought to be raised by defendants were in the nature of defences to the plaintiff's claim. From the perusal of the averments in the plaint, it did not appear that the Plaintiff was dealing in money lending business and the provisions of the Maharashtra Money Lending Act, 2014, had any application to the facts of the case. Therefore, the Notices of Motion for the rejection of the plaints did not merit countenance.

13. Being aggrieved, the defendants have invoked the writ jurisdiction.

14 Mr. Kedia, learned counsel for the petitioners, would submit that the learned Judge, City Civil Court, failed to appreciate the ground of bar to the tenability of the suit, in view of the provisions contained in the Maharashtra Money Lending Act, 2014, in a correct perspective. Incontrovertibly, the plaintiff had advanced huge amount on interest not only to the defendants, but to a number of persons. From the very documents annexed to the plaint, especially the Annexure for loans and advances, it becomes evident that a huge amount of over Rs.19 Crores was lent on interest by Motilal Laxmichand Salecha, HUF. The learned Judge, City Civil Court, therefore, ought to have taken into account the documents annexed to the plaint itself, to appreciate as to whether the transaction was one of illegal money lending. If those documents are considered in the light of the averments in the plaint, a clear case of money lending is made out, urged Mr. Kedia.

15. Secondly, Mr. Kedia would urge, the learned Judge, City Civil Court, lost sight of the fact that the plaintiff was relying upon the licences issued under the provisions of the Money Lending Act, 2014 which indicate that the licence was first issued on 16th January 2013. If it was the case of the plaintiff that, the loans were advanced armed

with the license under Money Lending Act, 2014, then the provisions of said Act, 2014 would govern the suit for recovery of the loans so advanced, and, in that event, the suit to recover the loans to which the provisions of the Money Lending Act, 2014 applied, is not maintainable as a Summary Suit.

16. To buttress this submission, Mr. Kedia placed reliance on the judgments of this Court in the cases of '*Sha Damji Deraj Vs. Megraj Bhikumchand and Co.*¹, and '*Vithal Krishna Shanbhag Vs. Sogmal Nathmal and Co. Bombay*².

17. Mr. Mishra, the learned counsel for the respondents-plaintiffs, supported the impugned order. It was submitted that in the income tax returns and the balance confirmations, executed by the defendants, there was a clear acknowledgment of the liability. The question as to whether the transaction was one of illegal money lending cannot be decided, in the abstract. It would warrant appreciation of evidence. Therefore, the learned Judge, City Civil Court, was fully justified in rejecting the Notices of Motion which were filed with an oblique motive to delay the disposal of the Summons for Judgment taken out by the plaintiff. Therefore, the petitions deserve

1 (1958) SCC Online Bom 110

2 (1957) SCC Online Bom 72

to be dismissed, urged Mr. Mishra.

18. At the outset, it is necessary to note that there is not much controversy over the jural relationship between the parties. The plaintiff claimed to have advanced friendly loans to Gopallal Mour, his wife and son, since the year 2011. In the case of Gopallal Mour, (Summary Suit No. 219 of 2016 @ Writ Petition No. 3896 of 2025) the ledger account indicates that the first advance was made on 7th June 2011. In the case of Smt Ashadevi Gopallal Mour, (Summary Suit No. 220 of 2016 @ Writ Petition No. 3900 of 2025), the first advance was made on 9th June 2011 and in the case of Sanjay Gopallal Mour, (Summary Suit No. 218 of 2016 @ Writ Petition No. 4255 of 2025), the first advance was purportedly made on 18th June 2011. Nor is there much dispute over the fact that the loans were advanced on interest.

19. The question that arises for consideration is, whether the advances by the plaintiff to the defendants fall within the ambit of loan, as defined under Section 2(13) of the Maharashtra Money Lending Act, 2014. Under Sub Section (13) of Section 2, “loan” means an advance at interest whether of money or in kind, except the advances or loans which are excluded by clauses (a) to (m) contained therein. Under Sub-Section (14) of Section 2 of the Maharashtra

Money Lending Act, 2014, “money lender” means a person who carries on the business of money-lending in the State or has his or its principal place of such business in the State and includes a pawn-broker but does not include the entities described in sub-clauses (i) to (xi).

20. If there is *prima facie* material to show that the advance is at interest and it falls within the ambit of loan, then the enquiry proceeds to determine whether the loan is excluded by any of the clauses (a) to (m) of Section 2(13) of the Money Lending Act, 2014. One of the clauses is clause (j), to which a reference was made by the learned Judge, City Civil Court. It reads as under:

“an advance of any sum exceeding Rs.3,000/- made on the basis of a negotiable instrument as defined in the Negotiable Instrument Act, 1881, other than a promissory note is not the loan under Money Lenders Act”.

21. On its plain reading, it becomes abundantly clear that to take an advance out of the purview of the “loan”, as defined under Sub-Section (13) of Section 2 of the Money Lending Act, 2014, it has to be shown that the advance was on the basis of a negotiable instrument. Thus, the advance has to be against the negotiable instrument. If an advance is by the negotiable instrument, in contradistinction to the advance against the negotiable instrument,

then clause (j) of sub-Section (13) of Section 2 does not save the advance from the ambit of the 'loan' governed by the provisions of Money Lending Act, 2014.

22. I am also conscious of the fact that to constitute money lending it has to be shown that the person has been carrying on the business of money lending. It has to be shown that there is an element of system, continuity and repetition in transactions of lending money. Mere multiple transactions of advances at interest do not, by themselves, justify an inference of money-lending.

23. In the case at hand, however, the learned Judge, City Civil Court, does not seem to have examined the challenge to the tenability of the suits, with the seriousness and adequacy it deserved. From perusal of the impugned order, it becomes clear the learned Judge was of the view that the contention of the defendants that the transaction was one of illegal money lending was in the nature of the defence of the defendants, and, thus, cannot be taken into account.

24. It is trite that while considering the application for rejection of the plaint, the Court is enjoined to have a meaningful and not formalistic reading of the plaint, as a whole, including the documents which are annexed to the plaint. To put it in other words, the

averments in the plaint are required to be read, in the context of the documents annexed to the plaint, to ascertain whether there is a cause of action or suit is barred by any provision of law. *‘(Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representative and Ors.³⁾*

25. In the case at hand, on a reading of the plaints, alongwith documents annexed with the plaints, it becomes evident that not only there is a reference to the advances of money at interest to the defendants therein, over a period of time, commencing from the year 2011 but also a list of loans and advances made by the plaintiff/HUF to as many as 25 persons / entities aggregating to an amount of Rs. 19,13,44,541/-, including the advances to the defendants herein. This fact was not at all examined by the learned Judge, City Civil Court.

26. At this stage, it is necessary to note that section 13 of the Money Lending Act, 2014, contains an interdict against passing of a decree in favour of a money-lender in any suit unless the Court is satisfied that at the time when the loan or any part thereof, to which the suits relates, was lent, the money-lender held a valid licence and,, if the Court is satisfied that the money – lender did not hold a valid licence, it shall dismiss the suit.

3 (2020) 7 SCC 366

27. In view of the aforesaid provisions, the learned Judge, City Civil Court ought to have examined whether on the basis of the documents relied upon by the plaintiff himself, an inference of money lending could be drawn.

28. This takes me to the second limb of the submission of Mr. Kedia that the ledger accounts indicate that advances were made since the month of June 2011 and licence under Bombay Money Lending Act, 1946, was first issued on 16th January 2013, ex-facie, the plaintiff had no money lending licence. Secondly, if the plaintiff had money lending licence w.e.f. 16 January 2013, as is evident from the licence issued on 16 January 2013, then the advances during the said period would be covered by the provisions of the Money Lending Act, 2014 and, resultantly, a summary suit under Order 37 of the Code would not be maintainable.

29. *Prima facie*, it appears that the plaintiff- HUF had advanced money to Gopallal Mour during the year 2013 – 2014 after issue of licence on 16.01.2013. Likewise, the advances were made to Ashadevi Gopallal Mour on 22nd September 2014 and to Sanjay Gopallal Mour in the year 2013, 2014 and 2015 also.

31. It would be contextually relevant to note that the Money

Lending Act 2014 makes certain provisions with regard to the recovery of loan by a money-lender. Certain duties are cast on the money-lender, including to keep accounts and furnish copies (Section 24) and deliver statement of account and copies thereof to the debtors (Section 25). Under Section 28 of the Act, 2014, notwithstanding anything contained in any law for the time being in force, in any suit to which the said Act, 2014 applies, filed by the money-lender against the debtor, the Court shall before deciding the claim on merits, frame and decide the issues whether the money-lender has complied with the provisions of Sections 24 and 25 and if the Court finds that the provisions of Sections 24 or 25 were not complied with, it may disallow the whole or any portion of the interest found due on the loan. Under Section 29, the Court is empowered to limit the interest recoverable from the debtor. Section 30 empowers the Court to direct payment of decretal amount by installments, notwithstanding anything contained in the Code, on an application of a judgment debtor.

31. In the context of the provisions of Bombay Money-Lenders Act, 1946, which were pari-materia Maharashtra Money Lending Act, 2014, in the case of *Sha Damji Deraj*, supra, this Court had observed

that, in a suit to which the Money Lending Act, 1946, applied, it was difficult, if not impossible, to apply the procedure of order 37. It was possible to take a view that in every suit to which the Money Lenders Act, 1946 applied and which was filed under Order 37, unconditional leave should be granted. The other view was that the procedure under Order 37 did not and cannot apply at all to a suit to which the Bombay Money Lending Act, 1946, applied. Eventually, without delving into question as to whether the provisions of Order 37 do not apply to the suit to which the Bombay Money Lenders Act, 1946 applied, this Court observed that it would be sufficient to say that looking to the provisions of that Act if a suit is filed under Order 37 and if the Money Lenders Act, 1946 applied to such a suit, in any view of the case, unconditional leave must be given to the defendant.

32. The position which, thus, emerges is that, before the question is examined on the touchstone of the provisions contained in the Money Lending Act, 2014, it is necessary to first ascertain whether any part of the claim is governed by the Money Lending Act, 2014. If the court finds that the provisions of the Money Lending Act, 2014 apply to the suit, then, the issue of tenability of the suit as a summary suit is required to be examined.

33. In the case at hand, the learned Judge, City Civil Court, did not at all examine the matter from the aforesaid perspective. The Notices of Motion were rejected on the premise that question as to whether the transaction was one of money lending was a matter of defence of the defendants and was not required to be considered at the stage of an application for rejection of the plaint under Order VII Rule 11 (d) of the Code. However, as noted above, from the very averments in the plaint and, especially, the documents annexed to the plaint i.e. ledger accounts and Annexures for loans and advances by the plaintiff/HUF, the learned Judge, City Civil Court was required to examine whether transactions in question fall within the mischief of illegal money lending, on the one side of the spectrum, and whether the provisions of the Maharashtra Money Lending Act, 2014 applied to the recovery in question and, if that was the case, whether a summary suit was maintainable, on the other side of the spectrum.

34. Since such an enquiry has not been embarked upon by learned Judge, City Civil Court, this Court considers it appropriate to set aside the impugned orders and remit the Notices of Motion back to the learned Judge, City Civil Court for a fresh determination.

35. Hence, the following order.

ORDER

- i) The petitions stand partly allowed.
- ii) Impugned orders stand quashed and set aside.
- iii) The Notices of Motion for rejection of the plaint stand restored to the file of learned Judge, City Civil Court.
- iv) The learned Judge, City Civil Court is requested to hear and decide the Notices of Motion for the rejection of the plaint afresh on their own merits and in accordance with law keeping in view the issues which arise for determination and referred to hereinabove.
- v) Parties shall appear before the learned Judge, City Civil Court on 5th May 2025.
- vi) Rule made absolute in the aforesaid terms.
- vii) No costs.

(N.J. JAMADAR, J)