

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APDT/2/2026
WITH CS/162/2020
IA NO: GA/1/2026**

**SMT. SUDHA KANKARIA
VS
SMT. BHAVYA BOTHRA**

BEFORE:
**HON'BLE JUSTICE DEBANGSU BASAK
-A N D-
HON'BLE JUSTICE MD. SHABBAR RASHIDI**

For the Appellant : *Mr. Debrup Bhattacharjee, Adv.*
Mr. Subroto Goswami, Adv.
Mr. Siddharth Singh, Adv.

For the Respondent : *Mr. Aritra Basu, Adv.*
Mr. Ratul Das, Adv.
Mr. Dwip Raj Basu, Adv.

HEARD ON : 18.05.2026
DELIVERED ON : 18.05.2026

DEBANGSU BASAK, J.:-

1. The appeal is at the behest of the defendant and directed against the judgment and decree dated December 17, 2025 passed in CS 162 of 2020.
2. By the impugned judgment and decree, learned Trial Judge, decreed the suit filed for recover of money lent and advanced.

3. Learned advocate appearing for the appellant submits that, the respondent is a money lender within the meaning of the Bengal Money Lenders Act, 1940. He submits that, the issue as to whether or not the respondent is a money lender within the meaning of the Act, 1940 was decided by the learned Trial Judge. He refers to the order dated November 16, 2023 passed in IA GA 1 of 2021 being application under Order XII Rule 6 of the Code of Civil Procedure as also, the order dated May 7, 2024 passed in the suit.
4. Learned advocate appearing for the appellant submits that in the application for judgment on admission, being IA GA 1 of 2021, learned Trial Judge noted the stand of the respondent in the affidavit in reply in such application that, the respondent applied for grant of license under the Act of 1940 and that, the same was yet to be received by the respondent. In view of such admission made by the respondent as plaintiff in the affidavit in reply learned Trial Judge, refused to pass a decree on admission as prayed for by the respondent as the plaintiff. He submits that, no appeal was carried against the order dated November 16, 2023.
5. Learned advocate appearing for the appellant draws the attention of the Court to the order dated May 7, 2024 and submits that the respondent as the plaintiff admitted that, it applied for grant of license under the Act of 1940 and did not receive the same till the date of such order. The respondent as the plaintiff invited the Court

to pass direction upon the concerned authority under the Act of 1940 to dispose of the application for grant of license by imposing penalty upon the respondent.

6. Learned advocate appearing for the appellant submits that, no license under the Act of 1940 was tendered in evidence and marked as exhibit. He submits that, in absence of a license being produced under the Act of 1940 the provisions of Section 13 of the Act of 1940 would stand attracted. He submits that, the suit was required to be dismissed by the learned Trial Judge, upon the respondent as the plaintiff not producing the license within the time as allowed by the learned Trial Judge by the orders dated November 16, 2023 and May 7, 2024.
7. Learned advocate appearing for the appellant submits that, the issue as to whether or not, the respondent is a money lender was decided. Therefore such issue could not be reopened on the principles of *res judicata*. He submits that, the issue of *res judicata* applies at different stages type of the same proceedings. In support of such contention, he relies upon **2005 (1) SCC 787 (Bhanu Kumar Jain vs. Archana Kumar & Arn.)**.
8. Learned advocate appearing for the appellant refers to exhibits G and G1. He submits that those exhibits are returns filed by the respondent before the Income Tax Authorities. He draws the attention of the Court to the columns of advances and submits that,

apart from the appellant the respondent lent and advanced monies to others. He draws the attention of the Court, replies to the question put in cross-examination to the witness of the respondent being question nos. 102 and 103.

9. Learned advocate appearing for the appellant submits that, although, the case of the plaintiff is that, the money was lent and advanced together with the interest, actually no interest was initially agreed to be paid. He submits that in cross-examination the witness of the respondent, stated that, initially no interest was agreed upon and that, subsequent to the appellant committing default in payment of the loan interest was agreed upon.
10. Learned Advocate appearing for the appellant relies upon three decisions of the Supreme Court rendered in Special Leave to Appeal (Criminal) No. 5485/2024 (**Raj Kumar Santoshi Vs. Prashant Malik**) dated July 23, 2024, February 16, 2024 and April 6, 2026 to contend that the suit of the respondent was not maintainable and therefore no decree could be passed therein.
11. Learned advocate appearing for the respondent draws the attention of the Court to the finding of the learned Trial Judge. He submits that the learned Trial Judge found the respondent not to be a money lender within the meaning of the Act of 1940. He submits that since the respondent was found not to be a money lender the rigours of the Act of 1940 do not apply.

12. Learned advocate appearing for the respondent, draws the attention of the Court to the answer given by the witness of the respondent, to question nos. 102 and 103 put in cross-examination of such witness. He submits that, one solitary instance of the lending money to an acquaintance cannot be construed to be a money lending business within the meaning the Act of 1940.
13. Relying upon **2011 (2) CHN 969 (Sitaram Poddar vs. Bhagirath Chouchary)** learned advocate appearing for the respondent submits that, since, there is no evidence that, the respondent lent and advanced money on a continuous basis to diverse persons and that, the respondent was consequently carrying on money lending business within the meaning of the Act of 1940, the rigors of the Act of 1940 will not apply. He submits that the learned Trial Judge correctly decreed the suit.
14. Learned advocate appearing for the respondent draws the attention of the Court to the order dated July 23, 2024 passed by the Hon'ble Supreme Court in **SLP (Crl.) No. 5485/2024 (Raj Kumar Santoshi vs. Prashant Malik)** and submits that the subject matter of such proceeding was under the Punjab Registration of Money Lenders Act, 1938. The provisions of the Act of 1940 are not *pari materia* with the Act of 1938. Moreover, he submits that in order to constitute the money lending business the person concerned must be effecting continuous transactions of such nature which is not the case here.

Consequently he submits that, the decisions of the Supreme Court dated July 23, 2024, February 16, 2026 and April 6, 2026 passed in **SLP (Crl.) No. 5485/2024 (Raj Kumar Santoshi) (supra)** will not apply.

15. The respondent herein filed a suit for recovery of money lent and advanced as against the appellant. Such suit was registered as CS 162/2020. In such suit, the respondent applied under Order XII Rule 6 of the Code of Civil Procedure seeking a decree on the basis of judgment on admission. Such application was registered as IA GA 1 of 2021.
16. By the order dated November 16, 2023 passed in IA GA 1 of 2021 learned Single Judge, refused to pass a decree on the basis of admission after returning the finding that, the respondent took a stand in the affidavit in its reply that it would obtain a license under the Act of 1940 and that, it applied for grant of such license and that the same was yet to be granted.
17. No appeal was carried against such order dated November 16, 2023 by the parties. There is therefore a conclusive finding by the learned Trial Judge as to the applicability of the Act of 1940 to the proceeding on the basis of the admission made by the respondent in its affidavit in reply. The respondent in its affidavit in reply filed in IA GA 1 of 2021 acknowledged that it was carrying on money lending business within the meaning of the Act of 1940. A Licence under the Act of

1940 was required to obtain a decree in the suit and that it applied for such licence.

18. There is a subsequent order dated May 7, 2024 passed in the suit by the learned Trial Judge, at the instance of the respondent. By such order, in the course of witness action at the trial of the suit, the submissions made on behalf of the respondent were recorded. The relevant portions of the order dated May 7, 2024 are as follows :

“Counsel for the plaintiff has admitted that he had applied for grant of licence but till date the same has not been granted.

Counsel for the plaintiff also submits that the application filed by the plaintiff is still pending before the concerned authority and if this Court will pass an order directing the plaintiff to pay the penalty, the plaintiff is ready to pay the penalty.

In view of the above, the concerned authority who is dealing with the grant of licence of money lenders under the Bengal Money Lenders Act, 1940 shall dispose of the application filed by the plaintiff for grant of licence by imposing the penalty not exceeding three times of the amount as prescribed under Section 10 of the said Act.

The concerned authority is directed to dispose of the application by imposing penalty upon plaintiff within a period of four weeks from the date of receipt of the copy of this order.”

19. Again, none of the parties preferred any appeal against the order dated May 7, 2024. In the order dated May 7, 2024 the issue of the applicability of the Act of 1940, was raised and discussed. It is on

such discussion and at the instance of the respondent, were the directions as noted in the order dated May 7, 2024 were issued.

20. **Bhanu Kumar Jain (supra)** discussed the principles of *res judicata* and its applicability at different stages of a proceeding. It held that such principles applied in different stages of the same proceeding. It noted that, the principles of *res judicata* can be invoked not only in separate subsequent proceeding but get attracted in subsequent stage of the same proceeding. Once an order made in the course of the proceeding becomes final it would be binding at that stage of that proceeding.
21. Applying the ratio of **Bhanu Kumar Jain (supra)** in the facts and circumstances of the present case two orders dated November 16, 2023 and May 7, 2024 held that, the provisions of Act of 1940 applied to the transactions in question, between the parties to the suit. Such finding was returned in the order dated November 16, 2023, in view of the stand taken by the respondent, in its affidavit in reply filed in IA GA 1 of 2021.
22. The respondent, took a stand in the affidavit in reply in IA GA 1 of 2021 that the provisions of Act of 1940, applied to the transaction between the parties to the suit and that, the respondent applied for grant of license under the Act of 1940 which was awaited. The respondent cannot be allowed to take a stand contrary to such declared stand in a subsequent stage of the same proceeding.

Moreover, the respondent invited the Court on May 7, 2024 when the witness action of the suit was in progress to issue direction upon the concerned authority to dispose of the application for grant of license by imposing penalty under the Act of 1940.

23. Therefore, not only did the respondent acknowledged and admitted that, the provisions of the Act of 1940 applied to the transactions in question, but also invited the Court to pass necessary orders for grant of licence to the respondent under the Act of 1940.

24. Section 13 of the Act of 1940 is as follows:

13 (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.

25. Sub-section (1) of Section 13 requires the Court in seisin of a proceeding not to pass a decree or order in favour of the money lender in any suit instituted by a money lender for its recovery unless, the money lender produced an effective licence. Sub-section (2) allows the Court to require the money lender to pay penalty and obtain the licence. Sub-section (3) prescribes that in the event of failure of the money lender to pay penalty, the Court shall dismiss the suit. Sub-section (4) prescribes that provisions of such section apply to a claim for a set off made by order on behalf of the money lender.

26. In the facts and circumstances of the present case respondent, invited the Court to undertake exercise under Section 13(2) of the Act of 1940 as is recorded in the order dated May 7, 2024. The respondent is yet to produce a licence under the Act of 1940 even at the final hearing of the appeal.

27. In view of the failure of the respondent to produce the effective licence under the Act of 1940, the Court was obliged to proceed

under Section 13(3) of the Act of 1940 and dismiss the suit. Learned Trial Judge, however, proceeded to decree the suit in favour of the respondent. In decreeing the suit, learned Trial Judge noted that the respondent referred to two orders passed with regard to the Act of 1940. While dealing with the issue nos.5 and 6, learned Trial Judge also noted that there was no evidence that the respondent was engaged in money lending business. There was no pleading of the respondent in this respect except the plea of the appellant that the respondent did not possess the requisite licence. Therefore, the learned Trial Judge held that it cannot be concluded that the respondent was engaged in money lending business at the time of advancing the loan and that, absence of licence was fatal to the suit.

28. With the deepest of respect the learned Trial Judge overlooked the two orders passed dated November 16, 2023 and May 7, 2024 where the issue as to the applicability of the Act of 1940 was decided as against the respondent and at the invitation of the respondent itself. There was no further material produced at the trial to dislodge such a finding.
29. Independent of the two orders noted above, there are materials on record to establish that the respondent was engaged in money lending business under the Act of 1940. That the respondent is engaged in money lending business can be established from Exbt.-G and Exbt.-G/1. Exbt.-G and Exbt.-G/1 are income tax returns of the

respondent. In such income tax returns, under the heading 'loans and advances', the respondent acknowledged that, it lent and advanced money of diverse amounts, to at least five persons. In reply to question no.103, the witness of the respondent, acknowledged that, it lent and advanced money on interest to one of the persons noted in Exbt.-G and Exbt.-G/1. The claim of the respondent in the suit, was not limited to the recovering of the principal amount but was together with the accrued interest. The agreement as to interest was sought to be explained in answer to question no.102 by the witness of the respondent by stating that initially no interest was agreed upon. On the default of appellant paying the defaulted amount, interest was agreed upon.

30. Given the materials in Exbt.-G and Exbt.-G/1 coupled with the admission of the respondent in its affidavit-in-reply in IA GA No.1 of 2021 the irresistible conclusion is that the respondent was a money lender within the meaning of the Act of 1940.
31. In view of such finding being returned by us that the respondent is a money lender within the meaning of the Act of 1940, the ratio laid down in **Sitaram Poddar (supra)** is not attracted. Factual matrix in the case at hand is completely different to that of **Sitaram Poddar (supra)**. In **Sitaram Poddar (supra)** the plaintiff therein did not acknowledge that it required a licence under the Act of 1940 as done by the respondent as a plaintiff in this case.

32. Our attention was drawn in course of hearing of the appeal to the orders passed by the Supreme Court in SLP (Crl.) No.5485/2024 (**Raj Kumar Santoshi**). Such orders are dated July 23, 2024, February 16, 2026 and April 6, 2026.
33. In its order dated July 23, 2024 passed in **Raj Kumar Santoshi (supra)**, Supreme Court noted the menace of money lent on interest without any licence thereof. It noted that, in order to constitute a money lending business within the meaning of the Act of 1938, the person concerned must be effectuating continuous transactions of such nature. It noted that, Shylockian attitude sans shame continues in such instances where, despite repaying the amount actually advanced, the borrower is constrained to pay sometimes double the amount or more, towards interest. It noted the desire to regulate such instances to rescue the hapless borrowers.
34. In its order dated February 16, 2026 passed in **Raj Kumar Santoshi (supra)**, the Supreme Court, noted that, during the pendency of the matter, the parties entered into a settlement. It noted that, there was a draft bill which was prepared and was in circulation with the respective States/Union Territories with regard to necessary legislation. In view of such stand being taken by the Union of India, the Supreme Court directed closure of the *suo moto* action.
35. The order dated February 16, 2026 was later clarified by the Supreme Court by its order dated April 6, 2026 passed in **Raj Kumar**

Santoshi (supra). Relevant portion of the order dated April 6, 2026 are as follows:

- “4. *It is pertinent to note that for unlicensed money lending against the promissory notes, whether accompanying with any other security such as cheque, title deeds or not, there already exists a Statutory Bar in State Money Lending Law. There is also a bar of “Dam Dupat” even under a money-lending licence i.e. against charging interest more than the principal amount actually disbursed. There is a further statutory disability against enforceability of such loan amount by unlicensed money lender. Moreover, such money lending is a punishable offence under the State Money-Lending Law.*
5. *Therefore, the Courts should ensure that the proceedings instituted by such private money lender are nipped in bud, whether Civil or Criminal, unless the money lender at the threshold produces license for money lending or shows that money was not advanced by him at interest.”*

36. The mandate contained in the order dated April 6, 2026, particularly, in paragraph 5 thereof, is binding upon us. The mandate requires a Court to nip any proceeding civil or criminal, including a suit for recovery of money lent and advanced in the bud, unless the money lender, at the threshold, produces the license for money lending or shows that the money was not advanced by such money lender at interest.

37. In the facts of the present case, the respondent as the plaintiff acknowledged before the Learned Single Judge that provisions of the

Act of 1940 apply and that, the respondent as the plaintiff was required to obtain money lending licence. The money lending licence, as noted, is yet to be produced. That the respondent is engaged in money lending business is established from exhibits G and G1. The respondent lent and admitted money to the appellant for interest. Consequently, the directions contained in **Raj Kumar Santoshi (supra)** apply.

38. In such circumstances, we are constrained to set aside the impugned judgment and decree. CS/162/2020 is dismissed.
39. APDT/2/2026 is allowed, without any order as to costs. IA No.GA/1/2026 is disposed of.

(DEBANGSU BASAK, J.)

40. I agree.

(MD. SHABBAR RASHIDI, J.)