OD-29

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APDT/9/2025
With
CS/177/2022

KAMLESH AGARWAL
VS
KARTAVYA PODDAR

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Anirban Ray, Sr. Adv. Mr. Debdutt Mukherjee, Adv. Mr. Varun Kothari, Adv. Mr. Nikunj Berlia, Adv. Mrs. Urvashi Jain, Adv.
For the Respondent	:	Mr. Rajarshi Dutta, Adv. Mr. A. P. Agarwalla, Adv. Mr. Sarbajit Mukherjee, Adv. Mr. Sarbesh Choudhury, Adv.
HEARD ON	:	13.05.2026
DELIVERED ON	:	13.05.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a defendant in a suit and directed against the judgment and decree dated January 15, 2025.

2. By the impugned judgment and decree, learned Single Judge, passed a decree for a sum of Rs.10,00,000/- along with interest at the rate of 15% per annum from April 1, 2019 till realisation of the decretal amount, under Chapter XIIIA of the Original Side Rules.

3. Learned Senior Advocate appearing for the appellant submits that, the suit was for recovery of money lent and advanced. He submits that, the respondent herein, as the plaintiff, is a money lender within the meaning of West Bengal Money Lenders Act, 1940. The respondent does not possess requisite licence under the Act of 1940. In such circumstances, relying upon three decisions of the Hon'ble Supreme Court rendered in **SLP (Crl.) No. 5485/2024** dated July 23, 2024, February 16, 2026 and April 6, 2026, he submits that, the suit in which the impugned judgment and decree was passed, was not maintainable.

4. Learned Senior Advocate appearing for the appellant submits that, in addition to the issue of maintainability of the suit on the ground of the Act of 1940, there is an issue of maintainability of the suit under the provisions of the Commercial Courts Act, 2015. He submits that, the subject matter of the suit is a commercial dispute within the meaning of Section 2(1)(c)(i) of the Act of 2015. He draws the attention of the Court to the pleadings of the plaint. He submits that the pleadings of the plaint itself establish that, the subject matter of the suit involves commercial dispute within the meaning of the Act of 2015.

5. Learned Senior Advocate appearing for the appellant submits that, these two issues are triable. Therefore, the learned Single Judge erred in passing a summary decree under Chapter XIIIA of the Original Side Rules. He points out that, the appellant filed written statement.

6. Learned advocate appearing for the respondent draws the attention of the Court to three decisions of the Supreme Court rendered in **SLP**

(Crl.) No. 5485/2024. He submits that, on a holistic reading of those three decisions, they are to be limited to the provisions of the Punjab Registration of Money Lenders Act, 1938. He submits that, the issue of absence of licence under the provisions of the Act of 1938, puts an embargo on filing of any proceedings. Such provisions are not there under the Act of 1940. Therefore, the decisions of the Supreme Court should not be read to mean that, the instant suit is not maintainable.

7. Referring to Section 13 of the Act of 1940, learned Advocate appearing for the respondent submits that, at best, absence of licence, will result in stay of the suit till such time, the licence is furnished. Suit cannot be held to be not maintainable. An opportunity should be afforded to the respondent as the plaintiff to produce the licence prior to the passing of the decree.

8. Learned Advocate appearing for the respondent submits that, the respondent never acted as a money lender. He submits that, acquaintance between the plaintiff and the defendant developed due to the nature of business that the defendant carried on. Due to such acquaintance respondent granted the accommodation loan to the appellant. The respondent never lent or advanced money to the appellant as a money lender within the meaning of the Act of 1940. In this regard, he refers to the definition of a money lender, loan, as also the business of money lending as appearing in the Act of 1940.

9. So far as the issue of commercial disputes under the Act of 2015 is concerned, ld. Advocate for the respondent submits that, the subject matter of the suit cannot be classified as a commercial dispute within the meaning of the Act of 2015. He contends that, none of the documents annexed to the plaint can be construed to be a promissory note within the meaning of the Negotiable Instruments Act, 1881.

10. We find from the records that, a suit for recovery of money was filed by the respondent as against the appellant, being CS/177/2022. In such suit, on an application, under Chapter XIIIA of the Original Side Rules, the learned Trial Judge passed a decree along with interest in favour of the respondent, as noted above.

11. There are three decisions of the Supreme Court on the issue money lending, rendered in Special Leave to Appeal (Crl) No. 5485/2024. In the first decision, dated July 23, 2024, Supreme Court took note of the growing menace of money lending on interest, without any licence. Supreme Court expressed the view that, it will regulate such instances and rescue hapless persons.

12. The next decision of the Supreme Court is dated February 16, 2026 where, the *suo motu* action taken by the Supreme Court was closed after noting that a draft Bill was prepared and was in circulation on the issue.

13. The third decision is dated April 6, 2026. The third decision clarifies the earlier decision dated February 16, 2026. It is apposite to refer to paragraphs 4 and 5 of the third decision which 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."

14. In our understanding, the direction contained in the third decision, is not limited to the provisions of the Punjab Registration of Money Lenders Act, 1938 but pervades to all proceedings instituted by private money lenders whether Civil or Criminal, unless, the money lender at the threshold produces the licence for money lending or shows that the money was not advanced by him at interest.

15. The plaint case of the respondent is that, it lent and advanced money along with agreed interest. Respondent is yet to produce any licence under the Act of 1940.

16. Purely on the basis of Section 13 of the Act of 1940, a triable issue is raised in the suit. Section 13 of the Act of 1940 is as follows:-

"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."*

17. Since, the learned Trial Judge did not decide the issue of whether or not, the respondent, as the plaintiff, is a money lender within the meaning of the Act of 1940, or whether or not the provisions of the Act of 1940 stand attracted to the suit, in our view, triable issues are raised in the suit which did not warrant a decree under Chapter XIII A to be passed in the suit. Since, triable issues of some substance were raised, the learned Trial Judge erred in passing the impugned decree under Chapter XIIIA of the Original Side Rules.

18. Consequently, the impugned judgment and decree dated January 15, 2025 is set aside.

19. We clarify that we did not enter into the rival contentions of the parties with regard to the maintainability of the suit and as well as whether or not, the Act of 1940 stands attracted. Our findings are solely for the purpose of deciding whether a triable issue arises. The issue as to whether or not, the subject matter of the suit involves a commercial dispute within the meaning of the Act of 2015 is also kept open to be decided by the learned Trial Judge.

20. APDT/9/2025 is disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

21. I agree.

(MD. SHABBAR RASHIDI, J.)

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AR(CR)