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(2013) 04 AHC CK 0136

Allahabad High Court

Case No: Second Appeal No. 1610 of 1979

Khazan APPELLANT

Vs

Guru Dutt RESPONDENT

Date of Decision: April 8, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 34
- Uttar Pradesh Regulation of Money Lending Act, 1976 - Section 18, 5

Hon'ble Judges: Sudhir Agarwal, J

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.
Heard Sri Madhur Prakash, learned counsel for defendantappellant (hereinafter referred to as "defendant") and Sri Bhupeshwar Dayal, Advocate for plaintiffrespondent (hereinafter referred to as "plaintiff").

2. This second appeal has arisen from judgment and decree dated 27.3.1979 passed by District Judge, Muzaffarnagar allowing plaintiff"s Civil Appeal No.322 of 1978 and decreeing Original Suit No.355 of 1975 for recovery of Rs.10,780/ from defendant along with pendentelite and future interest @ 6% p.a. on the principal amount of Rs.7,000/ with cost throughout.

3. The case set up by plaintiff is that on 28.10.1974, defendant borrowed a sum of Rs.7,000/, agreeing to repay the same with interest @ 18% p.a.. The amount having not been repaid, the aforesaid suit was instituted by plaintiff for recovery of principal amount of Rs.7,000/ and interest of Rs.3,780/ besides pendentelite and future interest.

4. The Trial Court formulated two issues, which are:

"A. Whether the defendant borrowed Rs.7,000/ from the plaintiff on 28.10.74 and executed the pronote and receipt in question as alleged?

B. To what relief, if any, is the plaintiff entitled?"

5. The Trial Court, however, dismissed the suit vide judgment and decree dated 1.6.1978 observing that plaintiff failed to prove due execution of pronote and receipt of advancement of amount to the defendant and therefore is not entitled for recovery thereof. The aforesaid decree has been reversed by lower Appellate Court vide impugned judgment dated 27.3.1979.

6. This Court formulated three issues while hearing this appeal under Order XLI, Rule 11 C.P.C.:

i. Whether lower appellate court erred in law in decreeing the suit without considering the effect of Section 18 of the U.P. Regulation of Money Lending Act, 1976 and whether the suit was barred under Section 6 of aforesaid Act.

ii. Whether Section 34 of amended C.P.C. bars grant of more than six percent interest despite otherwise contract between the parties.

iii. Whether lower Appellate Court erred in law in holding that disputed pronote was duly signed by appellant when the document placed on record was torn and burnt to the extent it contains thumb impression and it absence thereof it was not possible to prove execution of the document.

7. Now coming to question no.1, this Court finds that Section 18 of U.P. Regulation of Money Lending Act, 1976 (hereinafter referred to as "Act, 1976") prohibits a suit unless moneylender, at the time of advancing such loan or making such agreement or taking such security, has a valid certificate of registration or had applied for the same but the same had not been refused or the period specified in proviso to subsection (1) of Section 7 had not expired.

8. Section 18 of Act, 1976 reads as under:

"Bar on certain suits by moneylenders (1) No suits on the basis of any loan, agreement or security referred to in subsection (1) of Section 15 shall be instituted by a moneylender, unless at the time of advancing such loan or making such agreement or taking such security

(a) such moneylender held a valid certificate of registration ; or

(b) such moneylender had applied for such certificate and the same had not been refused ; or

(c) the period specified in the proviso to subsection (1) of Section 7 had not expired."

9. A perusal thereof clearly talks of a situation that at the time of lending money, if procedure for registration has not been observed or if application for registration is

pending, unless these things have been observed, moneylender, who was neither registered nor has observed procedure for registration, cannot maintain a suit for recovery of money.

10. The aforesaid provision would have no application in the present case, inasmuch as, Act, 1976 itself came to be enacted in 1976. It received assent of the President on 17th July, 1976 and was published in U.P. Gazette, ExtraOrdinary on 20th July, 1976. Section 1(3) of Act, 1976 provides that it shall come into force on such date as the State Government may, by notification appoint in this behalf. It is nobody''s case that aforesaid Act was notified by the Government from a date, earlier to the date of its enactment. Since, admittedly, the aforesaid Act, 1976 was not in existence in 1974, when the pronote in question was executed, question of the suit being barred by Section 18 read with Section 6 thereof would not arise.

11. Question No.1, therefore, is answered accordingly holding that suit in question was not barred by Section 18 read with Section 6 of Act, 1976.

12. Now, coming to question no. 2, it is not in dispute that Section 34 talks of a situation, with regard to ''interest'', from the date of filing of the suit, till the suit is decreed and amount is actually paid. Here 18% interest is claimed by the plaintiff for the period upto filing of the suit and therefore, rate of interest @ 18%, claimed by plaintiff, being for a period antecedent to the date of filing of suit, it is also not covered by Section 34, which read as under:

''Interest (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.In this subsection, ''nationalised bank'' means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II.For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."

14. When the aforesaid aspect was pointed out to learned counsel for the appellant, he also could not dispute the same and, therefore, question no.2 is also answered against appellant.

15. Now, coming to question no.3, it is evident from record that defendantappellant has himself stated that plaintiff got thumb impression of defendant on certain blank pronote and receipts as also entries made in accounts book, therefore, thumb impression contained on pronote having been admitted by defendant, onus lie upon him to prove otherwise facts pleaded by him in written statement. Only such facts are needed to be proved which are disputed and not the one which are admitted. When an admitted fact, is sought to be explained or different circumstances are sought to be pleaded, onus lie upon person who so plead to prove explanation or such circumstances.

16. In view thereof, the mere fact that subsequently document placed on record was torn etc. would itself make no difference when the thumb impression on pronote or receipts was admitted by defendantappellant. The question no.3 is therefore, also answered in favour of plaintiff and against defendantappellant.

17. In the result,I do not find any illegality in the judgment passed by lower Appellate Court.

18. The appeal lacks merit.

19. Dismissed.