
(2011) 7 ALLMR 674 : (2011) 6 BomCR 612 : (2011) 3 MhLj 519

Bombay High Court (Aurangabad Bench)

Case No: Civil Rev. Application No. 189 of 2009

Mundalik Jewellers and
Another

APPELLANT

Vs

Bhilaji Patil

RESPONDENT

Date of Decision: Dec. 10, 2010

Acts Referred:

Bombay Money Lenders Act, 1946 " Section 10, 2, 2(9)#Civil Procedure Code, 1908 (CPC)
" Order 7 Rule 11

Citation: (2011) 7 ALLMR 674 : (2011) 6 BomCR 612 : (2011) 3 MhLj 519

Hon'ble Judges: K.U. Chandiwal, J

Bench: Single Bench

Advocate: Swapnil S. Patil, for the Appellant; S.S. Wagh, for the Respondent

Final Decision: Dismissed

Judgement

K.U. Chandiwal, J.

Heard, Civil Revision Application was admitted on 10th December, 2009.

2. The Respondent filed Special Civil Suit No. 251/2008 for recovery of interest/damages stating that he has advanced sum by cheques to the

Appellant, with interest at the rate of 18 per cent per annum on the said amount.

Respondent has received the principal amount, however, despite

repeated demands, the Appellant failed to pay interest-cum-damages to the amount due.

3. Appellant raised preliminary objection to the maintainability of suit by an application (Ex. 13) u/s 10 of the Bombay Money Lenders Act, 1946.

He asserts, hand loan or the transaction, as propagated by the Respondent (Plaintiff) being without any license with Respondent for money lending,

the suit vitiates, and not maintainable.

4. The learned Civil Judge, Senior Division, did not agree to the Appellant, rejected the above application Exh. 13 and hence the present Revision

Application.

5. Mr. Patil, learned Counsel for the Petitioner, relied to the judgment of the Apex Court in the matter of 2003 (2) Mh.L.J. 529, Saleem Bhai and

Ors. v. State of Maharashtra and Ors. The Hon"ble Apex Court was dealing with the controversies to the effect of Order 7, Rule 11, Code of

Civil Procedure. In this context, it was observed that the trial Court can exercise power under the said provision at any stage of the suit before

registering the plaint or after issuing summons to the Defendant at any time before conclusion of the trial. It was also observed, for the purpose of

deciding an application under Clauses (a) to (d) of Rule 11 of Order 7, the averments in the plaint are germane; pleas taken by the Defendant in

the written statement are wholly irrelevant at that stage.

6. The above judgment, provides the avenue as it is only the plaint averment which is essential to be looked into. The plaint proceeds with specific

case of advance as friendly loan to the Appellant with repayment of damages at the rate of 18 per cent. There is nothing either in the plaint or by

the application Exh. 13 that there were series of the transaction between the parties or by Respondent with anybody to brand that the Respondent

was a habitual money lender. The Respondent was a Bank employee, he genuinely believed Appellant to invest his retrial benefit, with a hope of

good return.

7. Mr. Patil, learned Counsel, then took recourse to the judgment of this Court in the matter of Dharmadas Mohitbhai Wani v. Shidya Jatrya Bhil

and Ors. 1972 BCI (O) 19. Learned Single Judge dealt with the provisions in Sub-section (9) of Section 2 of Money Lenders Act. Learned Single

Judge found, as a finding of fact that, the Plaintiff in the said proceedings was carrying on the business of money lending and that he was a money

lender.

8. In the matter of Ramprasad Bhagirath Agrawal Vs. Uttamchand Danmal Pande, , dismissal of money decree in favour of the Plaintiff by the first

Appellate Court was questioned in the second appeal before this Court. This Court evaluated the evidence and on formulation of substantial

question of law found the assessment of evidence illustrated that Plaintiff had several monetary transactions and was dealing in money lending. The

business activities and litigations projected that suit filed by him was for recovery of loan advanced in the course of money lending transaction. This

Court also considered the provisions of Section 10 before it was amended effective 19-7-1975.

9. Thus, the two judgments relied by Mr. Patil convey clear message of regular transactions as a money lender by the said Plaintiffs and,

consequently, lost the suit against the debtor.

10. Now, reverting again to the facts in the present case, the plaint averment illustrates the cordial relations between the Respondent and the

Appellant, the Respondent advancing money, receiving back, wanting the interest and, hence, the suit. There could not be at any stage, any

evidence, from the Appellant to illustrate that the Respondent is a chronic money lender.

11. The second limb of submission of Mr. Patil was, whether a suit simplicitor for interest, as damages, is maintainable and, he says, it being

attracting provisions of Section 2(g) of Money Lenders Act, will be covering the impact and impasse of loan. I do not agree to this position as,

under the statutory arrangement under Negotiable Instruments Act, under Interest Act, the Respondent is entitled to claim interest. The transaction

is not perpetuated by any promissory note, stipulating any interest. The claim as for interest, as damages, is not deleterious, or destructive to any

law.

12. The Hon"ble Supreme Court in the matter of Gajnan and Others Vs. Seth Brindaban, , has clarified legal position that stray transactions would

not attract the provisions of Money Lenders Act. That apart, the plea that has been raised in Exh. 13 would also be revolving to the disputed

questions of facts and also law. The isolated transaction of advance by cheque would have to be treated, to be not a regular business of money

lending. It would not be treated to be opposed to public policy and void. The scheme of the Act provides an umbrella to the Respondent as he

was not a regular un-licensed money lender.

13. The diminutive scope of interference in Revision also needs consideration. The findings recorded by the learned Judge, while rejecting Exh. 13,

do not project illegality or couched with material irregularities. The Hon"ble Lordships of the Apex Court have indicated this position in The

Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, . This is also to be seen in Abdul Rehman

Shora (D) by LRs. and Others Vs. State of Jammu & Kashmir and Another, , Ram Kumar and Another Vs. State of Rajasthan and Others, ,

Shaik Jaffar Shaik Mahmood and Others Vs. Mohd. Pasha Hakkani Saheb and Others, .

14. The order does not call for any interference.

Civil Revision application is dismissed.

The observations are restricted to the Revision application.