
(1998) 09 BOM CK 0126

Bombay High Court (Nagpur Bench)

Case No: Second Appeal No. 127 of 1984

Ganesh Hawaldar

APPELLANT

Vs

Mithalal Dave

RESPONDENT

Date of Decision: Sept. 18, 1998

Acts Referred:

- Bombay Money Lenders Act, 1946 - Section 10
- Civil Procedure Code, 1908 (CPC) - Section 100
- Evidence Act, 1872 - Section 101

Citation: AIR 1999 Bom 120 : (1999) 1 ALLMR 598 : (1999) 1 BomCR 868 : (1999) 1 MhLj 110

Hon'ble Judges: S.D. Gundewar, J

Bench: Single Bench

Advocate: C.S. Kaptan, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

S.D. Gundewar, J.

By this second appeal, the appellant/defendant challenges the judgment and decree passed against him by both the courts below. Both the courts below have held that the plaintiff had advanced an amount of Rs. 4,000/- to the defendant and it was a loan transaction. In the result, both the courts below found in favour of the plaintiff and the suit of the plaintiff came to be decreed for an amount of Rs. 4,000/- with interest at the rate of 6% per annum. It is this finding of the courts below which is challenged in this appeal.

2. The only substantial question of law which arises for consideration in this appeal is, whether the suit is barred by limitation when the suit transaction was held to be a loan transaction?

3. It is true that both the courts below have held that the suit transaction was a loan transaction. Admittedly the said transaction took place on 13-3-1973. Therefore, the

suit should have been filed on 13-3-1976 for recovery of the amount of loan. However, it appears from the recitals in the Issar Chithi that the agreement of sale was to be performed on 13-3-1974. In this view of the matter, the time of repayment of loan can be taken as 13-3-1974 and if time of repayment of loan is taken as 13-3-1974 the present suit which was filed on 7-7-1976 is well within time. Both the courts below have held so and I find no reason to differ from the aforesaid findings recorded by the courts below in this behalf. So, it can very well be said that though the suit transaction was held to be a loan transaction the suit filed by the plaintiff was well within time.

4. It is then submitted by Shri Kaptan, learned Counsel for the appellant, that the plaintiff is a money lender and the suit was hit by section 10 of the Bombay Money Lenders Act, 1946 by reason of the plaintiff not having the money lending licence. On considering the entire evidence on record, I find no substance in the aforesaid submission made by the learned Counsel for the appellant. The plaintiff in emphatic terms says that he has never adopted money lending business. The burden of proof was, therefore, on the defendant to show that the plaintiff had adopted the money lending business as a profession. In this respect, the defendant had led evidence to show that the plaintiff had advanced a loan to him as well as to his son. He was, however, unable to show that besides him and his son, other persons had also borrowed money from the plaintiff. It is well settled that mere one or two casual transactions of money lending do not make a person as a professional money lender. I am fortified in this view by the judgment of Andhra Pradesh High Court in [Mrs. K. Sudersanam Vs. S. Venkatarao](#), . In this view of the matter, it cannot be said that the plaintiff had adopted money lending business as a profession. In my view, the lower Appellate Court has rightly held that the plaintiff not being a money lender was not required to comply with the mandatory provisions of the Bombay Money Lenders Act. No fault can be found with the said findings recorded by the lower Appellate Court. I, therefore, find no substance in the aforesaid submissions made by the learned Counsel for the appellant.

5. No other point was urged before me.

6. In this view of the matter, there is no reason to interfere with the judgment and decree passed by both the courts below.

7. In the result, the appeal fails and is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

8. Appeal dismissed.