
(2022) 08 CAL CK 0055
In the Calcutta High Court
Case No : GA 1 Of 2022, CS No.76 Of 2022

Bajrang Lal Agarwal

APPELLANT

Vs

Ravi Kant Agarwal

RESPONDENT

Date of Decision : 18-08-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 38 Rule 5, Order 12 Rule 6
Bengal Money Lenders Act, 1940 — Section 13

Citation : (2022) 08 CAL CK 0055

Hon'ble Judges : Ravi Krishan Kapur, J

Bench : Single Bench

Advocate : Satadeep Bhattacharya, Uttam Sharma, Rajarshi Dutta, S. Nayak, B. Ghosh

Final Decision : Disposed Of

Judgement

Ravi Krishan Kapur, J

1. This is an application for judgment upon admission. The suit is filed for recovery of money lent and advanced. The petitioner claims a decree of Rs.1,06,43,220/- (inclusive of interest).

2. Pursuant to negotiations by and between the petitioner and the respondent, the petitioner lent and advanced a sum of Rs.80 lacs to the respondent. The said sum was repayable with interest @ 12 per cent per annum. Initially, the respondent was to repay the said amount within a period of 120 days from the date of receipt. Pursuant thereto, on 4 September, 2014, the petitioner by way of Real Time Gross Settlement (RTGS) advanced a sum of Rs.80 lacs to the respondent. The respondent duly received the said amount and also acknowledged the same by a letter dated 4 September, 2014.

3. Thereafter, prior to expiry of 120 days period, the respondent approached the petitioner and sought for an extension to repay the entire principal amount alongwith outstanding interest. Subsequently, it was agreed by and between the

parties that on and from 3 January, 2015 the respondent would pay the petitioner interest @ 12 per cent per annum on quarterly basis and the loan would be repayable on demand. Between 1 January, 2015 to 31 March, 2019, the respondent paid an aggregate sum of Rs.43,92,331/- to the petitioner on account of interest. Thereafter, on 31 June, 2019 the respondent issued a post dated cheque for Rs.3,20,877/- on account of interest. Upon presentation of the said cheque, the same was dishonoured on the ground of "Insufficient Funds". By a letter dated 8 December, 2021 the petitioner was compelled to recall the entire loan and the outstanding interest thereon @ 12 per cent per annum.

4. On 8 December, 2021 the respondent handed over a post-dated cheque for the entire principal sum of Rs.80 lacs to the petitioner dated 31 December, 2021 with an assurance that the same would be honoured. On 1 January, 2020 the said cheque for Rs.80 lacs was dishonoured upon presentation on the ground of "Insufficient Funds". Thereafter, by a notice dated 14 January, 2022 the petitioner called upon the respondent to pay the entire principal amount alongwith interest. Despite receipt of the notice dated 14 January, 2022, the respondent neither made any payment on account of the principal amount nor on account of overdue interest. In this background, the petitioner was compelled to file this suit for an aggregate sum of Rs.1,06,43,290/- (inclusive of interest). Upon filing of this suit, the petitioner has filed this application for judgment upon admission.

5. It is contended on behalf of the petitioner that in view of the facts enumerated hereinbelow, the petitioner is entitled to a decree for judgment upon admission:

(a) The letter dated 4 September, 2014 whereby the respondent has admittedly received the entire loan amount of Rs.80 lacs and acknowledged that the same would be repaid within 120 days alongwith interest @ 12 per cent per annum.

(b) Confirmation of accounts duly signed on behalf of the respondent dated 31 March, 2019 whereby payment of interest on quarterly basis @ 12 per cent per annum to the petitioner is unequivocally and categorically admitted

(c) The issuance of the cheque towards interest dated 1 August, 2019 for a sum of Rs.3,20,877/- by the respondent towards interest which was subsequently dishonoured on the ground of "Insufficient Funds".

(d) The issuance of a post-dated cheque for Rs.80 lacs dated 31 March, 2021 which was also dishonoured on the ground of "Insufficient Funds".

(e) It is also alleged that from the Affidavit in Opposition filed by the respondent to this application, that it would be evident that there is no dispute to the incontrovertible case of the petitioner. In this connection reliance is placed on paragraphs 4, 5, 8 and 10 respectively of the Affidavit in Opposition wherefrom it appears that "there were repeated talks of settlement and assurances made to the petitioner by the respondent that the entire amount would be repaid", "a loan had been taken from the petitioner, the payment of interest of Rs.43,92,331/- in

respect of the above transaction has also been admitted by the respondent". Thus, it is contended that, on a conjoint reading of the averments contained in the Affidavit in Opposition, the admission of liability made by the respondent is clear, unequivocal and categorical.

6. On behalf of the respondent, it is contended that the entire claim of the petitioner is barred by limitation. Moreover, in view of the provisions contained inter alia in section 13 of the Bengal Money Lenders Act, 1940, no decree can be passed in this suit since the petitioner is not registered as a money lender and neither does the petitioner holds a licence. Additionally, it is contended that there are no circumstances warranting any order under Order 38 Rule 5 of the Code of Civil Procedure.

7. Order 12 Rule 6 of the Code of Civil Procedure, 1908 contemplates a speedy judgment at least to the extent of admission by the respondent. The Rule applies whether there was a clear admission of facts on the face of which it is impossible for the opposite party to succeed. The provision is enabling, discretionary and permissive and bestows wide powers on the Court [See: Uttam Singh Duggal & Co. Ltd. Vs. Union Bank of India (2000) 7 SCC 120, Ravish Chandra Jain vs. Raj Rani Jain (2015) 8 SCC 428 and Karan Kapali and Others vs. Lal Chand Charitable Trust and Another (2010) 4 SCC 753].

8. I find that the fact that the respondent has duly received the entire principal sum of Rs.80 lacs from the petitioner is clear, admitted and unequivocal. It is also an admitted position that the respondent has repeatedly made payments on account of interest in respect of the above transaction aggregating to Rs.43,92,331/- since inception. The liability of the respondent both towards principal and the interest is also admitted from the loan confirmation statements duly signed by the respondent and the issuance of post-dated cheques both towards principal and interest payable @ 12% per annum by the respondent. I also find that notwithstanding the notice dated 14 January, 2022, the respondent neither made any payment towards the outstanding dues of the petitioner nor replied to the same. In view of the aforesaid, I find that the respondent has unequivocally, unambiguously and categorically admitted its liability to the petitioner.

9. A contract of loan of money is a contract whereby one person lends or agrees to lend a sum of money to another in consideration of an express or implied promise to repay that sum on demand or at a fixed or determinable time or conditionally upon an event which is a certainty. A claim for money lent is a claim for debt. If A has paid money to B then in the absence of any cogent reason or defence, there is a prima facie obligation to repay the amount by B. The onus now shifts on B to show that the money is not repayable. Ordinarily, in such cases since a present debt is created the money becomes repayable at once on demand. The demand is not required to be clothed in the language of politeness. The demand maybe oral or written or can also be inferred depending on the facts and circumstances of the case. The language of the demand is immaterial

provided it has the effect. (Bullen & Leake on Pleadings, 18th Edition page 269).

10. I do not find any merit in the defence of the respondent that the suit is barred under any provisions of the Bengal Money Lenders Act, 1940. There is no evidence whatsoever to substantiate the fact that the petitioner is a "money lender" or in the business of "money lending" as contemplated under the provisions of the Act (Sitaram Poddar vs. Bhagirath reported in (2011) 2 CHN 969). This defence is often cited in such matters and is in my view dishonest and inequitable. The plea of not having a license never crossed the mind of the respondent when he negotiated the transaction, nor when he received the principal amount and appropriated the same nor when he paid interest regularly and consistently for years. Nevertheless, such a plea only dawns on the respondent when the time of repayment of the loan ripens. Thus, apart from being not tenable in law, I find the same to be inapplicable to the facts of this case. I also do not find any merit in the submission of the respondent that the claim of the petitioner is barred by limitation. A jural relationship between the parties within the prescribed period of limitation is evident from the facts of this case. On the other hand, I find that the defence of the respondent is vague, moonshine and pure myth and no credence ought to be given to the same.

11. I also find that there are apparent contradictions in the Affidavit in Opposition filed on behalf of the respondent. The respondent by its letter dated 4 September, 2014 initially admitted to the entire transaction. Thereafter, the respondent has also issued post-dated cheques thereby acknowledging its liability both towards principal and interest respectively. There are also loan confirmation statements signed by the respondent admitting its liability to the petitioner. The respondent has also regularly made part payment towards interest over the years. I also do not find any substance in the contention of the respondent that the loan confirmation statement have been forged or interpolated. The allegation of forgery is unsubstantiated and bereft of particulars. Hence, for the forgoing reasons in my view, the admission of liability both towards principal and interest is clear, unambiguous and unconditional. Barnwal Marketing & Ors. Vs. Gee Pee Infotech Pvt. Ltd. 2015 (1) CHN 476 @ para 16, Ajay Kumar Agarwal vs. Green Concretex Global Limited 2020 SCC OnLine Cal 2123 @ paras 33 and 34 and Padma Logistics & Khanij Pvt. Ltd. vs. Ideal Unique Realtors Pvt. Ltd. 2022 SCC OnLine Cal 126.

12. It is common in such matters for respondents to take unworthy, meritless and frivolous defences simply with the intent of procrastinating matters. Recalcitrant parties take advantage of the known delays in the judicial process simply to frustrate the petitioner. There must be a robust, pragmatic and commercial sense approach in such matters.

13. For the foregoing reasons, in my view the petitioner is entitled to an order in terms of prayer (a) of the Notice of Motion. The rest of the claim of the plaintiff is relegated to trial. With the aforesaid directions, GA 1 of 2022 stands disposed of. Insofar as the prayer for injunction is concerned, since the petitioner is being

granted a decree in this application, liberty is granted to the petitioner to apply for execution of the decree and seek appropriate reliefs in accordance with law, if the circumstances so warrant.