

(1970) 09 BOM CK 0019

In the Bombay High Court

Case No : A.F.A.D. No. 122 of 1963 with C.R.A. No. 123 of 1963

Dharamdas Motibhai Wani

APPELLANT

Vs

Shidya Jatrya Bhil and Others

RESPONDENT

Date of Decision : 21-09-1970

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 10(2), 2(9)
Negotiable Instruments Act, 1881 (NI) — Section 80

Citation : AIR 1972 Bom 65 : (1971) 73 BOMLR 458 : (1971) ILR (Bom) 1054 : (1971) MhLj 608

Hon'ble Judges : Nain, J

Bench : Single Bench

Advocate : B.R. Naik, for the Appellant; V.V. Divekar, for the Respondent

Judgement

Nain, J.—Both the Second Appeal and the Civil Revision Application have been filed by the original plaintiff. The Second Appeal arises from the suit he filed in the Court of the learned Civil Judge, Junior Division, Nandurbar, for recovery of Rs. 1,500/- from the four defendants in the said suit. The Civil Revision Application arises from the suit he filed for the recovery of Rs. 600/- in the same Court from the defendant in that suit. Both the claims are based on promissory notes which are executed after filing in blanks on a printed form, which is in Marathi. The printed form provides space for rate of interest in both in figures and in words and in both the promissory notes these blanks were not filled in. IN both the suits no interest was claimed upto the date of the suit. In both the suits, contentions were taken as to whether the transactions were governed by the Bombay Money Lenders Act, 31 of 1947, (hereinafter for the sake of brevity referred to as the "Money - Lenders Act."). The learned trial Judge thought that as no interest was claimed in the suits, the transactions were not "loans" within the meaning of that word in S. 2 Sub - s (9) of the Money - Lenders Act. Evidence was led on the point as to whether the plaintiff was a money - lender and whether he carried on the business of money - lending. But the learned trial Judge did not give any finding on that point. After disposing of the other

contentions of the defendants as to whether the promissory notes were brought about by fraud or consideration had failed, the learned trial Judge decreed the two suits in favour of the plaintiff.

2. The defendants in both the suits appealed to the District Court at Dhulia. The only contentions taken before the learned Assistant Judge, who heard the appeals, were whether the plaintiff was a money - lender and secondly whether the transactions were "loans.". ON the second point, the learned Assistant Judge took the view that as the documents in the suits were promissory notes and a promissory note was not excluded from the definition of the word "loan" in the Money - Lenders Act, it was irrelevant whether the interest was mentioned in the promissory note or not. He was of the opinion that the transactions covered by the promissory notes were "loans" as defined in S. 2, sub - section (9) of the Money - Lenders Act. On the first point, he gave a finding of fact that the plaintiff was carrying on the business of money - lending and was a money - lender within the meaning of that expression in S. 2, sub - section (10) of the Money - Lenders Act.

3. Section 2, sub - s. (9) of the Act defines "loan" as meaning an advance at interest. It further provides that it does not include an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note. It is clear that if the advance is made on the basis of a promissory note, it would not be excluded from the definition of a loan if it was an advance at interest. Section 2, sub - s. (10) defines a money - lender as a person who carries on the business of money - lending in the State. Section 10 of the Act provides that no Court shall pass a decree in favour of a money - lender in any suit filed by him to which the Money - Lenders Act applied unless the Court was satisfied that at the time when the loan or any part thereof, to which the suit relates was advanced. The money - lender held a valid licence. sub - section (2) provides that if during the trial of any such suit, the court finds that the money - lender had not held such licence, the court may, on the application of the money - lender, stay the hearing of the suit and require him to produce a licence within a period of three months.

4. The two contentions taken before me by Dr. B. R. Naik, appearing for the plaintiff, are ; firstly that the transactions in the two suits are not governed by the Money - Lenders Act, and secondly that even if they are when the learned Assistant Judge came to that conclusion he ought to have informed the plaintiff to enable him to make an application, if he so desired, for stay of the hearing of the suit for production of a money - lender's license. He contended that the learned Assistant Judge ought not to have dismissed the two suits.

5. Now, dealing with the first contention, it has been held as a finding of fact, that the plaintiff is carrying on the business of money - lending and he is a money - lender. The only question that remains is whether the transactions in the two suits were advances at interest. As I have mentioned above, the blanks in the printed forms of promissory notes as to interest have not been filled. Dr.

Naik contended that, firstly because interest is not mentioned in the promissory notes and secondly because no interest has been claimed in the suits these were not advances at interest. In my opinion, whether interest is or is not claimed in the suits is totally irrelevant to the determination of the question whether these were or were not advances at interest. The plaintiff cannot by giving up interest in the suit take the transaction out of the provisions of the Money - Lenders Act.

6. If the documents in the two suits had not attracted the provisions of Section 80 of the Negotiable Instruments Act, there would have been no controversy on the question. The controversy is, however, introduced by Section 80 of the Negotiable Instruments Act, which provides :-

"When no rate of interest is specified in the instrument, interest on the amount due thereon shall notwithstanding any agreement relating to interest between any parties, to the instrument be calculated at the rate of six per centum per annum, from the date of which the same ought to have been paid by the party charged, until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs." (Underlining supplied).

7. The words "notwithstanding any agreement relating to interest between any parties to the instrument", were substituted for the words "except in cases provided for by the Code of Civil Procedure, Section 522". Section 522 now corresponds to order 37 rule 1 of the Civil Procedure Code, 1908. The effect of the amendment appears to be that on the one hand it enables the Court to allow interest at the rate of 6 per cent even in summary suits on negotiable instruments on the other hand it affects all collateral agreements between the parties either as to the rate of interest payable or as to the liability of interest at all. Whether there is an agreement to charge interest at a rate either lower or higher than 6 per cent or there is an agreement not to charge interest at all or the rate of interest is not specified in the promissory note interest shall be allowed at 6 per cent per annum. The question is whether by virtue of Section 80 of the Negotiable Instruments Act, an advance becomes an advance at interest and, therefore, a loan within the meaning of Section 2 (9) of the Money - Lenders Act.

8. Dr. Naik on behalf of the plaintiff contended that "an advance at interest" could only mean an advance where interest is payable by contract and not by virtue of statute. In my opinion, this contention is not correct, because what is not included in the definition of the word "loan" is enumerated in Section 2 (9). To put the meaning suggested by Dr. Naik on the word "loan" would be to add to the list of excluded categories advances on promissory notes in which no rate of interest was specified. On the other hand, Dr. Divekar on behalf of the respondents contended that as an advance made on the basis of negotiable instrument other than a promissory note was not included, this indicated that in all cases advance made on the basis of a promissory note was included in the word "loan". This contention also does not follow naturally from the words used

in Section 2 (9) of the Money - Lenders Act.

9. In my opinion, the expression "an advance at interest" would cover cases where the interest was provided by the contract as well as cases where the interest was payable under a statute. The suit transactions were, therefore, loans within the meaning of Section 2 (9) of the Money - Lender Act. The suit transactions being loans by a money - lender were hit by Section 10 of the Money - Lenders Act.

10. The trial Court had decreed the two suits. The learned Assistant Judge held in his judgments that the transactions were hit by the Money - Lenders Act and, therefore, he dismissed the two suits. The plaintiff was not aware of the findings of the learned Assistant Judge until after the judgments. There was, therefore, no opportunity given to him to make applications for stay of the hearing of the suits to enable him to produce a money lender's licence. The learned Judge, in my opinion, ought not to have dismissed the suit, but to have followed the procedure prescribed by Section 10 of the Money - Lenders Act.

11. The appeal and the Revision Application are, therefore, allowed and the judgments and decrees of the lower appellate Court are set aside. The rule in the Civil Revision Application will be made absolute. The finding that the plaintiff is a money - lender and that the suit transactions were loans within the meaning of Section 2 (9) of the Money - Lenders Act, will, however, stand. The two appeals to the District Court are remanded to the District Court at Dhulia. That Court shall give an opportunity to the plaintiff to apply for stay of the hearing of the appeals to enable him to produce a money lender's licence within the period allowed by Section 10. If he does not produce the licence within the period, the suits shall be dismissed. If, however, the plaintiff produces such licence within that period, the suits shall be decreed after taking into consideration the question of interest, costs and installments under Sections 21 and 24 of the Money - Lenders Act. Each party shall bear his own costs throughout in both these matters.

12. Appeal allowed.