
(1987) 07 BOM CK 0045
In the Bombay High Court
Case No : Second Appeal No. 149 of 1981

Fulchand Champalal Jain

APPELLANT

Vs

Punjaru Shankar Patil and Others

RESPONDENT

Date of Decision : 29-07-1987

Acts Referred:

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

Citation : (1987) 3 BomCR 175 : (1987) MhLj 1032

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : M.V. Sali, for the Appellant; P.M. Shah, for the Respondent

Final Decision : Allowed

Judgement

Sharad Manohar, J.—The facts of this case are very simple. The appellant/plaintiff advanced a sum of Rs. 9000/- to the father of the defendants Shankar Nandaram Patil way back in the year 1974. There was no dispute either in the lower Court or in this Court that the sum was advanced without any interest. But a document styled as a hand-note was executed by said Shankar Nandaram Patil in favour of the plaintiff. Once again, there is no dispute that the document does not mention any term for payment of interest. The amount was advanced on 31st May, 1974 whereas Shankar Nandaram Patil died on 17-11-1974. The plaintiff gave notice to his son, present defendant No. 1 calling upon him to pay the amount. The notice drew blank. It may be mentioned here that no demand for payment of interest was made even in the notice. What was demanded was the amount of Rs. 9000/- taken by Shankar Nandaram Patil from the plaintiff.

The instant suit was filed by the plaintiff on 6th June, 1977 for recovery of the said amount of Rs. 9000/- with further interest.

2. The defendants filed the Written Statement and denied their liability. Their 1st contention was in the nature of a blank denial as regards the advance of any

amount by the plaintiff to Shankar Nandaram Patil. Their 2nd contention was that the plaintiff was a money-lender and had been doing the said business of money lending since 1974 and that, hence, the transaction was hit by the provisions of the Bombay Money-Lenders" Act.

3. On these pleadings, issue were framed and the parties went to trial. The 1st question required to be decided by the learned Judge was as to whether the transaction was in the nature of "loan" within the contemplation of section 2(9) of the Bombay Money-Lender"s Act. The learned Judge held that the document, Exhibit 31, dated 13-5-1974 was a pro-note although it was described by the plaintiff as a hand-note. He further relied upon the judgment of this Court reported in Dharamdas Motibhai Wani v. Shidya Jatra Bhil, 73 Bom.L.R. 458 and held that since this was a pro-note although interest was not shown as payable in the document itself, still it became payable by virtue of the provision of section 80 of the Negotiable Instruments Act. According to the learned Judge, therefore, the transaction was in the nature of a "loan" within the contemplation of the Bombay Money Lender"s Act.

However, he also held that the plaintiff was not a money-lender. The evidence led by the defendant in that behalf was examined by him and he found that just because the three transactions of "loan" advanced by the plaintiff to others including the suit transaction, were proved, that fact did not make the plaintiff a money-lender as such within the meaning of the Bombay Money-Lender"s Act.

So far as the merits were concerned, the learned Judge was satisfied by virtue of the evidence on record that the father of defendant No. 1 had taken the said amount of Rs. 9000/- from the plaintiff on 13-5-1974 as evidenced by the document, Exhibit 31. The learned Judge, therefore, decreed the plaintiff"s suit with costs.

4. In Appeal, the learned District Judge has taken the view that not only that the transaction amounted to "loan" within the meaning of the Bombay Money Lender"s Act, but that the plaintiff was the money-lender within the meaning of the said Act. After examining the evidence led by the parties, he came to the conclusion that the various transactions of advances made by the plaintiff led to the conclusion that the plaintiff must have been carrying on money lending business. In view of the provisions of section 10 of the said Act, he allowed the Appeal and dismissed the plaintiff"s suit for recovery of the said amount.

5. To my mind, the view taken by the learned Judge cannot be sustained. In the first place, the learned Judge was not right in coming to the conclusion that the transaction in question is a "loan" within the meaning of the Money Lender"s Act. The word "loan" has been defined by section 2(9) of the Bombay Money Lender"s Act to mean that it must be an advance at interest. Now, when this advance was made, all that was taken as a document for evidencing the advance was a receipt. The learned trial Court was very much in error in holding that receipt, Exh. 31, was a pro-note. I have examined the said document and I have called

upon the learned Advocates, Mr. Shah as well as Mr. Sali, to point out from the said document any promise to pay the amount of Rs. 9000/-. No such promise to pay is to be found in the said document at all. A promissory-note without a promise to pay is contradiction in terms. Not only that the document does not sow any stipulation of payment of interest, but it does not contain even any promise to pay. It is, thus, evident that the document, Exh. 31, is not a pro-note at all. If that is the position, section 80 of the Negotiable Instruments Act does not come into play at all. Section 80 of the said Act envisages an instrument such as a promissory-note or a Hundi or may be a Bill of Exchange as well. But the mere receipt is not an instrument within the contemplation of section 80 of the Negotiable Instruments Act. It follows that the ruling of this Court reported in 73 Bom.L.R.458 has no application whatsoever to the facts of this case. In that case, this Court was dealing with a promissory-note without any stipulation of the rate of interest. The present case is of a pro-note without stipulation of any rate of interest and in the context of such document this Court held that whether the interest was payable or not was not to be decided by mere reference to the document, but had to be decided also in the light of the provision of section 80 of the Negotiable Instruments Act which brought about a statutory stipulation of payment of interest at the rate of 6%. But that is only in respect of a pro-note or similar instrument contemplated by the section. A mere receipt without reference to any interest whatsoever and without reference to any promise to pay is not contemplated by said section 80. The view of the learned Judge to the effect that the transaction was a "loan" was, therefore, a wrong view and the confirmation of the said view by the learned District Court is, therefore, equally erroneous.

6. I may mention here that the view expressed by this Court in the above mentioned decision reported in 73 Bombay Law Reporter, page 458 may require reconsideration. Reliance is placed in that case upon the provisions of section 80 of the Negotiable Instruments Act for coming to the conclusion that every pro-note is deemed to have an implicit stipulation of payment of interest of 6% if no interest is mentioned therein. If one looks at the provision of section 80 of the said Act, one notices that the section does not come in to operation unless the instrument is silent only on the question of rate of interest. The section starts by saying :-

"when no rate of interest is specified in the instrument."

It does not contemplate the case of an instrument when the instrument is taciturn not only of the rate of interest but also about the very liability of payment of interest. The question, to my mind, needs reconsideration.

But whatever that may be, the said section 80 has no application whatsoever to the facts of the present case where the document was not a pronote at all or was not an instrument contemplated by said section 80 at all.

The Appeal has got to be allowed on this narrow ground itself.

7. I make it clear that there does exist the further question as to whether the

view of the learned Judge that the mere evidence of the three transactions of advance of monies was enough to prove that the person was a money-lender.

I do not wish to decide the said question, because, to my mind, the Appeal is capable of being disposed of in favour of the plaintiff on the question mentioned above, viz. that the transaction in question is not a "loan" at all.

8. The Appeal, therefore, succeeds. The decree passed by the lower Appellate Court is set aside and one passed by the trial Court is restored with costs throughout.

Mr. Shah wants time to pay the monies. He is given 2 weeks" time to file an undertaking to this Court to pay the monies within 6 months from today. If the undertaking is filed within 2 weeks, the decree of this Court shall not become executable until 1st of February, 1988. If no such undertaking is filed within 2 weeks from today, the decree shall become executable immediately.