

(1935) 12 CAL CK 0015
In the Calcutta High Court

Indra Chandra Bag and Others

APPELLANT

Vs

Hiralal Bong and Others

RESPONDENT

Date of Decision : 12-12-1935

Acts Referred:

Bengal Money Lenders Act, 1933 — Section 3

Citation : AIR 1936 Cal 127

Hon'ble Judges : R.C. Mitter, J

Bench : Division Bench

Judgement

R.C. Mitter, J.—The appeal is on behalf of defendants 3, 4 and 8 in a suit instituted by the plaintiff to recover from them and other defendants a sum of Rs. 800. The Court of first instance passed a decree against the other defendants but dismissed the suit against defendants 3, 4 and 8; but the lower appellate Court has modified that decree and has given a decree to the plaintiff against all the defendants, hence this appeal by defendants 3, 4 and 8. The plaintiff came to Court with a case that the defendants borrowed from him a sum of Rs. 400 on 31st January 1930. On that date the defendants executed a promissory note in favour of the plaintiff, but the said promissory note being insufficiently stamped has not been admitted in evidence. The plaintiff accordingly based this case on the original consideration. The Court of appeal below has found that a sum of Rs. 400 was in fact taken as a loan by all the defendants from the plaintiff. This finding has been arrived at by the lower appellate Court independently of the promissory note as the lower appellate Court has expressly stated at line 10, p. 5 of the paper-book. Mr. Sen on behalf of the appellant has raised two points before me, namely, (1) that the promissory note being out of the way, the plaintiff cannot sue inasmuch as the advance of the money and the execution of the promissory note were contemporaneous; and (2) that the Court below ought not to have granted interest at a rate more than 25 per cent, the stipulation in the promissory note being at the rate of 75 per cent per annum. Regarding the first point I do not find any substance in it. It has been laid down in this Court that if a promissory note is inadmissible in evidence on account of it being

insufficiently stamped, the plaintiff is entitled to sue on a cause of action which is independent of promissory note.

2. It is not necessary that there should be an independent express contract prior to the execution of such a promissory note. The fact that the money has been lent implies a promise to repay it, and the plaintiff in such a case has a cause of action on the implied promise which is independent of the promissory note. This is the view which has been taken in *East Bengal Commercial Bank Ltd. v. Surendra Narayan Laha* 39 C W N 235, and that is also the effect of my judgment pronounced in *Mohatabuddin Mia v. Mahammad Najir Joddar* Second Appeal No, 1483 of 1933, decided, on 16th August 1935, delivered on 16th August 1935. For this reason I overrule the first contention of Mr. Sen. In support of his second contention Mr. Sen relies on the provisions of Section 3, Bengal Money Lenders Act of 1933. Before dealing with this point, it is necessary to state the following facts: the plaintiff's dues at the date of the suit came up to Rs. 1,150 on a calculation of the interest at the rate of Rs. 75 per cent per annum, but he gave up his claim for Rs. 350 and he limited his claim to a sum of Rs. 800 only, that is to say Rs. 400 on account of principal and Rs. 400 on account of interest. The loan was taken before the Bengal Money Lenders Act came into force. The judgments of both the Courts below were pronounced before the said Act came into force. Accordingly there is no indication of this point in any of the judgments for the obvious reason that it was not raised in the Courts below and could not have been raised because the Act came into force after the judgments. Mr. Sen urges that the claim for interest ought to be limited to 25 per cent per annum. I am unable to give effect to his contention for this reason that even if Section 3, Bengal Money Lenders Act, is applicable to the facts of this case, which I doubt very much, because Section 3 only raises a presumption that a rate of interest exceeding 25 per cent. is excessive and the transaction was harsh and unconscionable and is substantially unfair. That section does not say that if any loan before the passing of the Bengal Money Lenders Act was given, the Court shall not in any circumstance allow interest at a rate more than 25 per cent per annum if the loan is unsecured. This section raises a presumption of fact which the lender can by evidence rebut. The point therefore which is raised for the first time, is not a pure question of law because it involves the determination of a question of fact to be decided on evidence which may be led by the creditor to rebut the said presumption. This the plaintiff had no opportunity to do. For this reason I am unable to allow Mr. Sen to urge this point here.

3. I also very much doubt whether the provisions of Section 3 can be applied to a case where the decision of the trial Court was given before the Bengal Money Lenders Act came into force. This is the view taken with regard to Section 4, Bengal Money Lenders Act, by a Division Bench of this Court in *Brojendra Kumar Dutt Roy v. Sushil Chandra Chakraborty* 39 C W N 1213, and I am of opinion that the reason given in that judgment for not applying the provisions of Section 4 to a case where the loan had been incurred before the Act came into force, and the decision of the trial Court was given before the Act came into force, is equally

applicable to a case where the provisions of Section 3 are involved. For these reasons I hold that the decree passed by the lower appellate Court is correct and this appeal must be dismissed with costs.