

(2018) 05 GAU CK 0046
In the Gauhati High Court
Case No : RFA 19 of 2010

M/S HAROOCHARAI TEA ESTATE and ANR	APPELLANT
Vs	
M/S PARAMOUNT TEA MARKETING P LTD. and ORS	RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96
Negotiable Instruments Act, 1881 — Section 138
Assam Money Lenders Act, 1934 — Section 4, 7D
Contract Act, 1872 — Section 23, 24
Limitation Act, 1963 — Article 1, 21

Citation : (2018) 05 GAU CK 0046

Hon'ble Judges : KALYAN RAI SURANA

Bench : Single Bench

Final Decision : Allowed

Judgement

- 1) Heard Mr. D. Mozumdar, learned senior counsel, assisted by Ms. J. Kakati, learned counsel for the appellants and Mr. H. K. Deka, learned senior counsel assisted by Mr. P. Choudhury, learned counsel for the respondents.
- 2) By this appeal under Section 96 CPC, the appellants have challenged the judgment and decree dated 11.02.2010 passed by the learned Civil Judge No. 2, Kamrup, Guwahati in Money Suit No. 7/2004, thereby decreeing the suit without cost.
- 3) The appellants were arrayed as the defendants No. 1 and 2 in the suit. The suit was instituted by the respondent No.1 for realizing Rs.45,12,062.83 with interest, cost, etc. The defendants No. 3 and 4 in the suit are arrayed as proforma respondents No. 2 and 3 in this appeal.
- 4) As per the plaint, the case in brief is that the respondent No. 1 is a registered member of the Gauhati Tea Auction Centre and is in the business of

tea auction/tea broker. The parties had steady business relationship in the matter of sale of tea since the year 2000. It was projected that in course of business, the respondent used to make advances to the appellant No. 1 as and when required for cultivation and manufacture of tea under agreed terms and conditions. In respect of said transactions, the respondent maintained true ledger account, which was current open and mutual. By letter dated 12.02.2000, the appellants requested the respondent No. 1 for a loan of Rs.45,00,000/- lakh (Rupees Forty five lakh). Pursuant to discussion with the appellant No. 2, the managing partner of the appellant firm, the parties entered into an agreement dated 12.02.2001, by which the respondent agreed to advance a sum of Rs.40,00,000/- (Rupees Forty lakh only) under the terms and conditions as laid down in the agreement. After availing the said loan, the appellants used to send their made tea produced in their gardens for sale in the auction centre through the respondent No.1, and the loan with interest was to be adjusted from the sale proceeds. It was projected that during the course of business, from time to time, the appellants used to avail loan advances from the respondent No.1 Company exceeding Rs.40.00 lakh as and when required by them. It was projected that thereafter, the dispatches of made tea became irregular, which were not sufficient to liquidate the loan and after 30.03.2002 supply of made tea had totally stopped. It was stated that as on 31.1.2003, the outstanding dues stood at Rs.45,12,062.83. On 29.06.2002, the appellant had issued a cheque of Rs.10.00 lakh, which was dishonored on presentation, for which a proceeding under Section 138 of the Negotiable Instruments Act have been initiated. Hence, by stating that the cause of action arose on 10.03.2000, 12.01.2001 and 30.03.2002, the respondent No. 1 had filed the said suit for realization of money, interest and cost.

5) The appellants had contested the suit by filing their written statement. It was pleaded that the suit was liable to be dismissed under Section 7-D of the Assam Money Lenders Act, 1934. It was stated that the loan was given against the stock of made tea of Kamarbund Tea Estate and as on 31.12.2001, a sum of Rs.19,76,679/- was payable by Kamarbund Tea Estate, which was to be realized from them because in the meanwhile by virtue of Deed of Reconstitution dated 31.05.2002, amongst (i) the appellant No. 2, (ii) proforma respondent No. 2, (iii) proforma respondent No.3, (iv) R.P.

Barooah Tea & Enterprises Pvt. Ltd., a partner of appellant No. 1, and (v) Kamarbund Tea Estate, firm, a new entity i.e. Kamarbund Tea Estate was constituted and the proforma respondents No. 2 and 3 had retired from the said firm and the assets and liabilities in respect of the said Kamarbund Tea Estate was taken over by the proforma respondent No. 3 and R.P. Barooah Tea And Enterprises Pvt. Ltd. The said reconstitution was confirmed and declared vide deeds and writings dated 06.02.2002 and 24.09.2003, and that a notice for the same was also given to the respondent No. 1 by letter dated 26.07.2002. It was projected that the suit was bad for non joinder of Kamarbund Tea Estate as well as R.P. Barooah Tea And Enterprises Pvt. Ltd as necessary parties. Moreover, the claim of respondent No. 1 was also denied.

6) On the basis of the pleadings the following issues were framed for trial:-

1. Whether the suit is maintainable in law as well as on facts?
2. Whether the suit is barred by limitation?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the suit is liable to be dismissed U/S 7(d) of the Assam Money Lenders Act?
5. Whether the plaintiff is entitled to get interest as claimed in the suit?
6. Whether the defendants are jointly and severally liable for making payment of Rs. 45,12,062.83?
7. To what other relief/reliefs the parties are entitled?

7) In course of trial, the respondent No. 1 had examined two witnesses and exhibited various documents. However, the appellants had not cross-examined both the PW-1 and PW-2 examined by the respondent No. 1. The appellants had also examined one witness and had exhibited some documents.

8) In respect of issue No. 1, the suit was held to be maintainable. In respect of issue No. 2, by taking the starting point of transaction from 12.01.2001, the date of the agreement (Ext.2), admitted by appellant, as the suit was filed on 12.01.2004, it was held that the suit was held not barred by limitation.

In respect of issue No. 3, as the appellant had admitted receipt of money, it was held that through the entities were reconstituted, but the others were not the necessary parties in the suit and it was held that the partners of the

appellant No. 1 firm would continue to be liable for the dues. Hence, the suit was held not to be bad for non-joinder of necessary parties. In respect of issue No. 4, it was held that one act of lending money does not mean that the party required a license for lending and it was held that the suit was not liable to be dismissed under Section 7-D of the Assam Money Lenders Act, 1934. In respect of issue No. 5, on the basis of admission made by the appellant No. 2, the respondent was held to be entitled to get interest as claimed. In respect of issues No. 6 and 7, it was held that it was an admitted fact that the appellants had taken Rs.40,00,000/-(Rupees Forty lakh only) as loan from the respondent No.1 on 12.01.2001 and the plea of reconstitution of firm was held not good in the eye of law, as such, the appellants were held liable to pay Rs.45,12,062.83/-. Accordingly the suit was decreed for the said amount along with interest at the rate of 24% per annum w.e.f. the date of filing of suit till realization.

9) The learned senior counsel for the appellant had submitted that the learned trial Court had failed to appreciate the pleadings on record in its correct perspective inasmuch as in paragraphs 3, 5 and 8 of the plaint the respondent No. 1 had made the following statements:-

â??3] That in the course of business aforementioned the plaintiff company upon request of the defendant firm used to make advances to the defendant firm as and when required for cultivation and manufacture of tea under agreed terms and conditions between the parties. The plaintiff has been maintaining a true ledger account, which is current, open and mutual, and all the transactions between the parties are duly reflected in such account.

5] â?| in case of default in refund the unadjusted advanced amount, the defendant firm shall be liable to pay to the plaintiff company within one month along with an interest at the rate of 24% (twenty four per cent) per annum.

8] That in spite of such irregular dispatch of tea the defendant firm continued to avail loan advances on various dates from the plaintiff company.

Consequently, the statement of accounts maintained by the plaintiff company in the usual course of business shows a huge amount of outstanding due to be paid by the defendant firm to the plaintiff company.â??

10) By referring to herein before extracted statements made in the plaint, the learned senior counsel for the appellants had submitted that as per the

admission made in the pleadings, the loan transactions between the parties cannot to be said to be a solitary transaction of loan. It is submitted that

from the statement of accounts (Ext.5), a series of loan transaction can be seen, as such, it is submitted that in view of the bar created under Section

7-D of the Assam Money Lenders Act, 1934, the suit was not maintainable. It was also submitted that in view of the express bar, as provided under

Section 7-D of the said 1934 Act, the suit could not have been decreed notwithstanding that both the PWs were not cross examined by the appellants.

11) By referring to the statement of accounts (Ext. 5), it was submitted by the learned Senior Counsel for the appellant that both the parties were fully

aware that the loan transaction in reference was not a single transaction because the loan amount of Rs.40.00 lakh was not provided as a single or

solitary loan. By referring to various entries contained therein, it was submitted that interest on monthly rest, at on various occasions, interest was

charged on daily or weekly basis, which is more than the agreed rate of interest. Reference was made to first of such entries, which was contained in

accounts statement (Ext.5) for a period from 01.03.2000 to 31.03.2000, showing interest charged for a period between 10.03.2000 to 31.03.2000. The

next entry for interest charged was for period 01.04.2000 to 09.05.2000. The next entry for interest charged was for a period between 10.05.2000 to

17.05.2000. The next entry for interest charged was for a period between 10.05.2000 to 23.05.2000. The next entry for interest charged was for a

period between 24.05.2000 to 25.05.2000. The next entry for interest charged was for a period between 26.05.2000 to 27.05.2000. The next entry for interest charged was for a period

from 28.05.2000 to 01.06.2000. It was submitted that, similarly, the

interest for loan was charged from time to time thereafter as per the convenience of the respondent No.1 and not in terms of the agreement, just

like a ordinary private money-lender and the last entry for interest charged was for the period between 01.04.2003 to 31.01.2003.

12) By further referring to the plaintiff document No. 3 series (i.e. copy of cheques and drafts), as well as the bank certificate (Ext.3), against

cheques and bank drafts issued for advancing loan to the appellant, it was submitted that the loan of Rs.40.00 lakh was not a single payment made by

the respondent No. 1, but it included payments of various amounts to the creditors, suppliers, transporters, money paid to the individual partners of the

appellant No.1, etc., as per the request of the appellants and, as such, it is submitted that the evidence on record revealed that the respondent No. 1

had acted as a private banker to the appellants by making payments on their behalf, which were made as per the requests made by the appellants

from time to time. It was submitted that the evidence in this regard vide Ext.5 was not even considered by the learned trial court. In support of his

submissions, the learned senior counsel for the appellant had placed reliance on the following cases - (i) RM. AR. AR. RM. AR. Ramanathan

Chettiar Vs Commissioner of Income Tax, Madras, AIR 1967 SC 657; (ii) Universal Radiators, Coimbatore Vs Commissioner of Income Tax, Tamil

Nadu (1993) 2 SCC 629; (iii) Ramdeo Ranglal & Ors. Vs Ghooronia Tea Co. Pvt. Ltd., (2006) 1 GLR 414; (iv) Tezalpatty Tea Pvt. Ltd. & Ors. Vs

Eastern Tea Brokers (P) Ltd. and Ors., 2009 (1) GLT 456; (v) Manik Chakraborty Vs. Jiten Ch. Das, 2016 (1) GLT 395.

13) Per contra, the learned counsel for respondent had submitted that the respondent No. 1 is in business of tea broking and sells made tea in the

Guwahati Tea Auction Centre. Therefore, to ensure regular supply of made tea, which is their business, the respondent No. 1 had advanced money to

the appellants. It was submitted that in this regard, request was made on 12.02.2000 (Ext. 1). Therefore, the series of transactions which ensued

thereafter, must be held to be a solitary loan to the appellant. It was submitted that the appellants did not lead any evidence to show that the

respondent No. 1 had given any other loan to anyone else and, as such, the loan given to the respondent to 1 was may be a casual loan. It was

submitted that by exhibiting letter dated 26.07.2002 (Ext. E), the appellants had not only admitted the loan, but also admitted the interest due to the

respondent No. 1. It was further submitted that by not cross-examining both the PWs of respondent No. 1, not only the appellants had failed to set up

their case, but it also amounted to an admission of the evidence tendered by the respondent No.1. Moreover, by referring to the cross-examination of

the appellant No.2, namely, Shri Rajib Barooah (DW-1), recorded on 19.06.2008, it was submitted that the appellants had admitted that they had

availed the loan and it was admitted that as per Ext. 2 the rate of interest was 24% per annum. It is submitted that after having availed a huge loan on

interest, the act being non- gratuitous, the appellants cannot be allowed to take shelter under the provisions of the Assam Money Lenders Act, 1934 to

frustrate the otherwise lawful agreement dated 12.02.2001 (Ext.2).

14) In support of his submissions, the learned senior counsel for the respondent No. 1 had placed reliance on the case of P.Vaikunta Shenoy and Co.

Vs. P. Hari Sharma, AIR 2008 SC 416. It was submitted that the facts of the case was similar in the present case in the hand. In this cited case, a

para materia provision of Karnataka Money Lenders Act, 1961 was in reference. The plaintiff-appellant in the cited case was doing business of

commission agent and had advanced money from time to time to the defendant therein to ensure supply of areca nuts (supari). The plaintiff therein did

not have the license as required by the Karnataka Money Lenders Act. The learned trial Court had decreed the suit and the Honâ??ble High Court

had set aside the decree. In the said context, the Honâ??ble Apex Court had held that no doubt loan was advanced and interest was charged on the

loan, yet that was not the principle object of advancing the loan, but loan was given to ensure that the supplies are regular and made to him rather

being diverted to other parties. Hence, the Honâ??ble Apex Court had set aside the judgment of the Honâ??ble High Court by restoring the decree

passed by the learned Trial Court. Thus, by relying on the said cited case, the learned senior counsel for the respondent No. 1 had prayed for dismissal

of the appeal.

15) Therefore, on the basis of submissions made by the learned senior counsels for the parties, the following point of determination arise for

consideration of the Court in this appeal, which are â?

a. Whether the loan was granted by the respondent No.1 to the appellants pursuant to the Loan Agreement dated 12.01.2001 (Ext.2)?

b. Whether any part of the claim was barred by limitation?

c. Whether the learned trial court had erred in holding that the suit was not barred under Section 7-D of the Assam Money Lenders Act, 1934?

d. Whether the impugned judgment and decree dated 11.02.2010 passed by the learned Civil Judge No.2, Kamrup, Guwahati in M.S. No. 7/2004 is

sustainable on facts and in law?

POINT OF DETERMINATION NO.(a) AND (b):

16) On a perusal of the agreement dated 12.01.2001 (Ext.2), it is deemed fit to extract the relevant narration therein:-

AND WHEREAS the FIRST PARTY being in need of finance has approached the SECOND PARTY and has requested the SECOND

PARTY to provide it a sum of Rs.40,00,000/- (Forty lakhs) only as advance against supply of 2,50,000 kgs. of made tea and has assured the Second

Party to give a special cash discount equivalent to 2% (two) percent per month on reducing balance method on advance payments so payable by the

SECOND PARTY, against despatched/ sale of tea from the first party through the Tea Auction Centre, Guwahati.

AND WHEREAS the SECOND PARTY has agreed to provide the aforesaid sum of Rs.40,00,000/- (Forty lakhs) only to the FIRST PARTY, before

30th April 2001 from today i.e. on the condition that the FIRST PARTY shall sell the entire tea produced by it in favour of the SECOND PARTY or

its nominee only through the Tea Auction Centre, Guwahati at the existing market rate, till full liquidation/ adjustment of the aforesaid sum of

Rs.40,00,000/- (Rupees Forty lakhs) only, subject to special cash discount as mentioned in this Deed.

17) The said agreement also contained clause relating to the event of default. The relevant clause 2 is extracted below:-

2]. That the FIRST PARTY shall sell the entire tea produced only through the SECOND PARTY, through the Tea Auction Centre, Guwahati till the

advance amount is liquidated. Be it specifically mentioned that value of tea supply is hereby meant after deduction special cash discount i.e. the net bill

after deduction of Special Cash Discount as agreed in para (4) here-in-below. The FIRST PARTY shall not supply/sell tea produced by it through any

other party except the instant SECOND PARTY, either directly or through Tea Auction Centre or through any other mode till full adjustment/

liquidation of the aforesaid sum of Rs.40,00,000/- (Forty lakhs) only advanced by the Second Party. Partly, for any reason whatsoever the FIRST

PARTY shall be liable to refund all unadjusted advance amounts till full payment with all costs and expenses etc. within one month from the date of

default.

18) As per the statement made in paragraph 10 of the plaint, the appellant No.1 firm had stopped supplying tea after 30.03.2002 for sale and did not

repay the loan. Thus, in terms of clause 2 of the said agreement (Ext.2), the default of the appellants had commenced from 30.03.2002.

19) Coming to the statement of accounts (Ext.5), a perusal of the same reflects that the first installment of loan of Rs.5,00,00/- was made during the period between 01.03.2000 to 31.03.2000. The photocopy of the exhibits are available on record, but the dates on which the various entries made in Ext.5 i.e. statement of accounts were not readable. It appears that the original exhibits was kept separately in safe custody vide trial court's order dated 18.04.2007. However, the original exhibits were not sent along with the LCR. Having observed as aforesaid, the matter was again listed before the court on 03.05.2018 so as to put the learned counsels for the appellants and the respondent No.1 to notice about the same. The learned Senior Counsel for the respondent, who was holding another set of exhibits had produced the same for inspection by this Court and by the learned counsel for the appellant. On going through the same, the relevant dates of entries made in the statement of accounts (Ext.5) are found to be readable. Therefore, the relevant entries are recorded in the LCR by pencil by this Court with the consent of the learned counsel for the parties. Thereafter, on a perusal of the said statement of accounts (Ext.5), the first entry of Rs.5,00,000/- as loan to the appellant was made on 10.03.2000. The second entry of Rs.5,00,000/- as loan to the appellant was made on 22.03.2000. The third entry of Rs.5,00,000/- as loan to the appellant was made on 28.03.2000. The fourth entry of Rs.10,850/- as interest was made on 31.03.2000. The closing balance of Rs.15,10,850/- was shown as opening balance as on 01.04.2000 in the statement of accounts for period between 01.04.2000 to 31.03.2001 (2nd page of Ext.5). The closing balance of Rs.33,04,619.37/- as on 31.03.2001 was the opening balance as on 01.04.2001 in the statement of accounts for the period between 01.03.2001 to 31.03.2002. Therefore, in the opinion of this court, the statement of account (Ext. 5) do not corroborate with the projection made in Deed of Agreement dated 12.01.2001 (Ext. 2), as per which a sum of Rs.40.00 lakh was to be advanced before 30.04.2001 as the transaction between the parties have commenced on and from 01.03.2000. Therefore, it is seen that by exhibiting the said statement of accounts (Ext.5), the respondent No.1 had proved that the starting point of loan transaction was not on and from 12.01.2001, as projected in the plaint, but the undeniable evidence on record as per Ext.5 is that a sum of Rs.15,10,850/- had already been paid by the respondent No.1 to the appellant No.1 as on 31.03.2000 (pg.1 of Ext.5). Thus, the finding of fact recorded

by the learned trial in respect of issues No. 6 and 7 that loan was taken by the appellant No.1 on 12.01.2001, is held to be an error in appreciating the documentary evidence in the form of statement of accounts (i.e. Ext.5) on record.

20) Therefore, it must be examined whether the loan transaction was covered by Article 21 of Schedule of the Limitation Act, 1963, being money lent under an agreement that it shall be payable on demand. In this connection, as already indicated above, in this case, the lending by the respondent No.1 did not start after the parties entered into the agreement dated 12.01.2001 (Ext.2), but as per the Statement of accounts (Ext.5), first installment of loan was given on 10.03.2000, i.e. between the period from 01.03.2000 to 31.03.2000, which is much prior from the date of execution of the Agreement dated 12.01.2001. Moreover, having examined the statement of accounts (Ext.5), this court cannot be persuaded to accept that the transaction between the respondent No.1 and the appellants were â??mutual, open and currentâ? as envisaged under Article 1 of the Schedule of the Limitation Act, 1963 because one of the essential ingredient of Article 1 of the Schedule of the Limitation is that there must have been reciprocal demands between the parties. Nonetheless, the learned trial court had proceeded on the basis of its incorrect finding to the effect that the loan availed by the appellants on 12.01.2001, which is not corroborated by the statement of Accounts (Ext.5). In the absence of any evidence to the effect, it is not open for this appellate court to hold that each loan advanced by the respondent No.1 would constitute a separate transaction. Thus, to hold that the loan was either covered by Article 1 or Article 21 of the Schedule of the Limitation Act, 1963 this appellate court would be making out a totally different case not even pleaded by the parties, which is not permissible. However, it is seen that the learned trial court had failed to apply its mind on the nature of transactions by its failure to appreciate the evidence on record in form of Ext.5, i.e. the Statement of Accounts, which negates the contents of Agreement dated 12.01.2001 (Ext.2), because, as already indicated above, as per the said Agreement (Ext.2), the parties had agreed that a sum of Rs.40.00 lakh would be advanced before 30.04.2001 from â??todayâ? i.e. 12.01.2001. Thus, in the opinion of this court, from the language used in the agreement to the effect that the loan of Rs.40.00 lakh would be given between 12.01.2001 to 30.04.2001, the said agreement (Ext.2), does

not take cognizance of advances and payments made prior to 12.01.2001. Nonetheless, the transactions occurring before 12.01.2001 would be barred

by limitation, being transaction prior to three years from the date of filing of the suit. Thus, the decision of the learned trial court on issue No.2 wherein

it was held that 12.01.2001 was the starting point for the period of limitation, then suit is not barred by limitation is not sustainable on facts as there are

considerable debit entries prior to 12.01.2001 in the statement of accounts (Ext.5), as such, all entries in the said statement prior to 12.01.2001 must be

held to be barred by limitation. Thus, this Court does not concur with the finding recorded by the learned trial court in respect of issue No.2.

21) Thus, based on the discussions above, this court is inclined to hold that the loan was advanced prior to the execution of Agreement dated

12.01.2001 (Ext.2). The said finding is based on the contents of Statement of Accounts (Ext.5), which clearly contains many debit entries prior to the

agreement dated 12.01.2001.

22) Therefore, in view of the discussions above, this court is of the opinion that as per Ext.5, the respondent No.1 had granted loan to the appellants

even prior to the Loan Agreement dated 12.01.2001 (Ext.2). Hence, the debit entries towards loans and advances as well as interest charged in the

Statement of Account (Ext.5) prior to 12.01.2001 is held to be barred by limitation, being beyond the period of 3 (three) years prior to the institution of

the suit on 12.01.2004. The point of determination No. (a) and (b) are answered accordingly.

POINT OF DETERMINATION NO. (c):

23) On a perusal of materials available on record, it is seen that the appellants had made a request for the loan vide letter dated 12.02.2000 (Ext.1). As

per the said letter, the loan was sought by the appellants to implement the manufacturing of made tea in their factory. It was projected that the tea

would be sold through the respondent No. 1 for liquidation of short term advance before the end of the season. The relevant paragraph of the said

letter is extracted below:-

“From this year we propose to manufacture tea in our factory from the Green Leaf of Haroocharai Tea Estate along with Puranimati Division,

which produces about 15.00 lacs Kgs. of Green Leaf annually. To implement the manufacturing of tea in our factory, we are approaching you for a

short term financial support against teas to be manufactured on condition that the entire manufactured tea will be sold in the Auction ex- factory

through you as the only broker. You will have the authority to deduct from the sale proceeds your advance to us on per Kg. basis for liquidation of

your entire short terms advance before the end of season.â??

24) Thus, in the opinion of this court, going by the language used, in present case, the main purpose of the loan by the respondent No.1 was not to

secure made tea, but loan was granted on the request of the appellants to finance the manufacturing of made tea in the factory of the appellants.

Therefore, in the opinion of this Court, although it was projected by the learned Senior Counsel for the respondent No.1 that the facts of the present

case was similar to the facts of the case of P.Vaikunta Shenoy and Co. (supra), but in the considered opinion of this Court, the facts are

distinguishable. In the said cited case, finance was granted to secure steady supply of areca nuts (supari), but in the present case, the supply of made

tea was offered as a means to liquidate the loan and 24% interest due thereon and in addition, profit of 2% cash discount on advance payment was

also offered. The narration contained in the letter dated 12.02.2000 (Ext.1), stands as a testimony to the said distinguishable fact.

25) The question arises as to whether the loan advanced by the respondent No.1 to the appellants can be termed as a â??casualâ? transaction. In this

regard, while dealing with the word â??casualâ?, the Honâ??ble Supreme Court, in the case of (i) RM. AR. AR. RM. AR. Ramanathan Chettiar

(supra) (ii) Universal Radiators, Coimbatore (supra), which arose out of Income Tax Act, 1961, inter-alia, by taking the aid of dictionary, interpreted

the word â??casualâ? to mean â??accidental or irregularâ?. Moreover, by referring to the case of S.G. Mercantile Corporation Pvt. Ltd. Vs. CIT.,

(1972) 1 SCC 465 and CIT Vs. Calcutta National Bank Ltd., AIR 1959 SC 928, the Honâ??ble Apex Court had held that even a single venture had

been held to amount to business and the profit arising out of such a venture had been held to be taxable as income arising out of business. In the case

of Universal Radiators, Coimbatore (supra), it was held that â??â?! An income directly or ancillary to the business may be an income from business,

but any income to an assessee carrying on business does not become an income unless the necessary relationship between the two is established.â?? In

the case of RM. AR. AR. RM. AR. Ramanathan Chettiar (supra), it has been held by the Honâ??ble Supreme Court as follows:-

â??5] â? According to Shorter Oxford English Dictionary the word â??casualâ?? is defined to mean â??(i) subject to or produced by chance;

accidental, fortuitous, (ii) coming at uncertain times; not to calculated on, unsettledâ?. A receipt of interest which is foreseen and anticipated cannot be regarded as casual even if it is not likely to recur again. â?â??

26) In this context, it is seen that the pleaded case of the respondent No.1 in the plaint was that the parties had steady business relationship in the

matter of sale of tea since the year 2000. However, no effort has been made by the respondent No.1 to prove that prior to the grant of loan of

Rs.5,00,000/- vide entry dated 10.03.2000, there was any prior business relationship between the appellant and the respondent No.1. Therefore, this

Court is of the considered opinion that the respondent No.1 has not been able to prove that this was a case where loan was granted to the appellant

only to secure constant supply of made tea.

27) It would now be relevant to refer to the provisions of Section 7-D of the Assam Money Lenders Act, 1934, which is extracted herein below:-

â??7- D. Suits to proceed without registration certificate, etc. No suit for the recovery of a loan advanced by a money-lender shall proceed in a civil

court until the court is satisfied that he holds a valid registration certificate or that he is not required to have a registration certificate by reason of the

fact that he does not carry on the business of money lending.â??

28) Moreover, the statement of accounts (Ext.5) reflects that the submissions made by the learned Senior Counsel for the appellants was correct to

the effect that interest was calculated at the whims and fancies of the respondent No.1, and each entry for interest charged was capitalized and, as

such, instead of simple annual interest, compound interest was charged by the respondent No.1. It is seen that under the provisions of Section 4 of the

Assam Money Lenders Act, 1934 charging of compound interest, directly or indirectly, is illegal. There is no clause in the agreement dated 12.02.2001

(Ext.2), permitting the respondent No.1 to capitalize interest that was charged upon the appellant No.1 from time to time. Moreover, the provisions of

Section 4 of the Assam Money Lenders Act, 1934 shall prevail over any agreement inconsistent thereto, moreso in view of the provisions of Sections

23 and 24 of the Contract Act, 1872. Hence, it would be relevant to quote the provisions of Section 4 of the Assam Money Lenders Act, 1934 is

quoted below:-

4. Prohibition of compound interest and provisions as to defaulting .- Any contract made before or after the commencement of this

Act for the loan of money by a money-lender shall be illegal so far as it provides directly or indirectly for the payment of compound interest or for the

rate or amount of interest being increased by reason of any default in the payment of sums due under the contract.

29) In the present case in hand, the learned trial court had merely mentioned that the loan agreement was on 12.01.2001 and, as such, the suit filed on

12.01.2004 was within the period of limitation. Thus, the learned trial court had failed to appreciate the evidence on record in its correct perspective.

In this regard, it is held that in this case, a part of the loan covered by Agreement dated 12.01.2001 (Ext.2) had been advanced prior to 12.01.2001 and

moreover, interests had been levied on the loan prior to 12.01.2001 and that every entry of interest is found to be principalized as per Ext.5. Thus, in

view of the discussions above, the suit filed by the respondent No.1 is held to be hit by the provisions of Section 7-D of the Assam Money Lenders

Act, 1934. Moreover, the interest charged as per the statement of accounts (Ext.5) appears to be compounded at irregular rests, and the interest is

found to be added to the principal and is thus, principalized, which is prohibited under the provisions of Section 4 of the said Assam Money Lenders

Act, 1934.

30) This court in the case of Ramdeo Ranglal (supra) had held that statements made in the petition clearly indicated that the petitioner therein was

lending monies to the respondent company regularly for the purpose of staff payment, labour payment, etc. and that the question would have been

altogether different had the monies been advanced on a very few exceptional occasions to meet the emergent situation. However, this Court in the

case of Makhan Lal Deb (supra) and Manik Chakraborty (supra), had remanded the case back to the learned trial court so as to give one opportunity

to the lender to prove that he had a valid money lending licence. However, in the case in hand, as the appellant had taken the specific plea of the suit

being hit by Section 7-D of the Assam Money Lenders Act, 1934, on the failure of

the respondent No.1 to prove that they were holding a valid licence

to lend money, no case of remand of the matter back to the learned trial court is made out. The Division Bench of this court in the case of Tezalpatty

Tea Pvt. Ltd. (supra), in a situation similar to the present case in hand, had held as follows:-

â??23] Thus, the respondent, a tea broker, whose stated object does not include advance of money/ loan/ money lending with compound interest,

admittedly engaging itself in advancing money/ loan with interest higher than the interest fixed by the RBI for bank and financial institutions and that

too with compound interest. Further, it is also noticed from the record that indisputably the respondent company had advanced money/ loan with

interest to 19 other companies, 18 of whom are tea planters in Assam and from this the irresistible conclusion is that the respondent regularly indulged

or engaged itself in the business of money lending with compound interest and as such the activities of the respondent is very much within the money

lender as defined under Section 2(1) of the Act.

31) Thus, the similarity in the present case and in the cited case is that the respondents No.1 in both the cases are tea brokers. Both had advanced

money on compound interest, not for securing made tea alone, but to finance other activities of the tea estate, like paying money to creditors, etc.

Therefore, notwithstanding that in the case of Tezalpatty Tea (supra), the respondent therein had given advance to 19 other tea estates, but in the

present case in hand, from the nature of transactions as shown in statement of accounts (Ext.5), the multiple incidence of advancing money to the

appellant No.1 firm is indicative of regular advancing of loan to the appellants, not as a solitary or few stray transactions, but as a normal business

activity with a view to earn regular interest in the compound footing at the rate of 24%, which is by any standard, excessively higher than the

maximum bank lending rates prescribed by the RBI.

32) Therefore, in view of the discussions above, by relying the ratio laid down in the cases of (i) RM. AR. AR. RM. AR. Ramanathan Chettiar

(supra), (ii) Universal Radiators, Coimbatore (supra), (iii) Ramdeo Ranglal (supra), (iv) Makhan Lal Deb (supra), and (v) Tezalpatty Tea Pvt. Ltd.

(supra), the point of determination No.(c) is answered in the affirmative and in favour of the appellants by holding that the learned trial court had erred

in holding that the suit was not barred under Section 7-D of the Assam Money Lenders Act, 1934.

POINT OF DETERMINATION NO.(d):

33) In view of the discussions on Point of Determination No. (a), (b) and (c) above, the Point of Determination No. (d) is also answered in the

negative and in favour of the appellants by holding that the impugned judgment and decree dated 11.02.2010 passed by the learned Civil Judge No.2,

Kamrup, Guwahati in M.S. No. 7/2004 is not sustainable on facts and in law.Â
ORDER

34) Hence, this appeal stands allowed. The impugned judgment and decree dated 11.02.2010 passed by the learned Civil Judge No.2, Kamrup,

Guwahati in M.S. No. 7/2004 stands set aside and reversed. Resultantly, the suit is not found to be maintainable.

35) Let a decree be drawn up accordingly.

36) The LCR may be returned back. While returning the LCR, the Registry may further inform the learned trial court that original exhibits were kept

separately in safe custody vide order dated 18.04.2007, which was not sent to this Court while transmitting the records. Hence, the learned trial court

shall search out the original exhibits kept in safe custody.

37) The parties are left to bear their own cost all throughout.