
(1994) 03 GUJ CK 0042
In the Gujarat High Court

Ramanlal Punjalal Shah

APPELLANT

Vs

Pari Bhulabhai Haribhai

RESPONDENT

Date of Decision : 31-03-1994

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 10, 2(18), 2(9), 5

Citation : (1994) 2 GLR 1475

Hon'ble Judges : K.R. Vyas, J

Bench : Single Bench

Judgement

K.R. Vyas, J.—This appeal has been filed by the original defendant of Civil Suit No. 1428 of 1973 which was decided by learned Judge, City Civil Court, Ahmedabad on 28-4-1978 whereby the suit filed by the respondent to recover an amount of Rs. 5,000/- with interest at the rate of 6% per annum from 9-4-1973 till full and final payment of the amount and costs is decreed.

2. The case of the respondent-original plaintiff is that the respondent-original plaintiff is doing banking business at Ahmedabad and the appellant-original defendant is a resident of village Dharisana in Dehgam Taluka, has borrowed an amount of Rs. 5,000/- on March 12, 1970 for the purpose of business and for that purpose, he had given a bearer cheque dated April 10, 1970 which was not sent for payment to the bank at the request of the appellant. However, in spite of repeated demands, as the appellant failed to pay the amount, present suit has been filed.

3. In the written statement Exh. 11, the appellant raised a number of pleas including the plea of limitation, jurisdiction, has inter alia contended that it is true that he had given the cheque for Rs. 5,000/- dated 10-4-1970. However, according to the appellant, the same was given at the time of taking the loan and not subsequently. According to the appellant, in fact, Rs. 4,550/- had been paid to him on 12-3-1970 and not Rs. 5,000/-. The appellant has further stated that he has paid up the said amount by delivering wheats worth Rs. 2,000/- and millet grass bundles worth Rs. 2,700/- to the father of the respondent who was

the Chairman of Ajod Dairy, Ahmedabad.

4. It appears that the parties have not pressed the issue pertaining to limitation, cheque for Rs. 5,000/- given on 10-4-1970 and interest claim of Rs. 13,500/- from 10-4-1970 to 8-4-1973. The learned trial Judge by his impugned judgment and decree has held the issue of jurisdiction in favour of the respondent by holding that Ahmedabad Court has jurisdiction. The learned trial Judge has not believed the case of the appellant that the amount of Rs. 4,700/- was paid by delivering wheats and grass bundles. Regarding the bar of suit under the provisions of Bombay Money Lenders Act, the learned trial Judge has answered the said issue also in the negative. In view of these findings, the learned trial Judge, as stated above, has decreed the suit in favour of the respondent.

5. Therefore, being aggrieved by the same, the appellant-original defendant has filed the present appeal.

6. Mr. Shroff, learned Advocate for Mr. K.G. Sheth, beside arguing the case on merits, raised a contention that it is an error committed by the trial Court in holding that the suit is not barred under the provisions of the Bombay Money Lenders Act as the appellant had taken money for the purpose of business and as he has undertaken the carting contract of milk from Ajod Dairy, Ahmedabad. In the submission of Mr. Shroff, the said finding is contrary to the evidence on record inasmuch as the evidence on record would suggest that the respondent is undisputedly a money lender and was not having a valid licence and the amount advanced to the appellant was by way of loan and therefore, under the provisions of the said Act, the suit is required to be dismissed only on this ground. The respondent, though duly served, has not filed any appearance and therefore, I have to proceed with the appeal in absence of the respondent.

7. Section 2(9) of the Bombay Money Lenders Act, 1946 (hereinafter referred to as the "Act") reads as under:

2. In this Act, unless there is anything repugnant in the subject or context -xxx
xxx xxx xxx

(9) "loan" means an advance at interest whether of money or in kind, but does not include -

(a) a deposit of money or other property in a Government Post Office Bank or in any other Bank or in a Company or with a Co-operative Society;

(b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public, religious or charitable object;

(c) a loan advanced by Government or by any local authority authorised by Government;

(cc) a loan advanced to a Government servant from a fund, established for the welfare or assistance of Government servants, and which is sanctioned by the

State Government;

(d) a loan advanced by a Co-operative Society:

(d1) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund);

(d2) a loan to or by an insurance company as defined in the Insurance Act, 1938,

(e) a loan to, or by a Bank;

(f) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;

(g) except for the purposes of Secs, 23 and 25 -

(i) a loan to a trader;

(ii) a loan to a money lender who holds a valid licence; or

(iii) a loan, by a landlord to tenant for financing of crops or seasonal finance, of not more than Rs. 50 per acre of land held by the tenant;

(iv) a loan advanced to an agricultural labourer by his employer. Explanation: xxx xxx xxx

(10) "money lender" means -

(i) an individual, or

(i i) an undivided Hindu Family; or

(iii) a Company, or

(iv) an unincorporated body of individuals, who or which -

(a) carries on the business of money lending in the State; or

(b) has his or its principal place of such business in the State.

Section 2(18) defines "trader" as under:

(18) "trader" means a person who in the regular course of business buys and sells goods or other property whether movable or immovable and includes:

a wholesale or retail merchant,

a commission agent,

a broker.

a manufacturer,

a contractor,

a factory owner,

but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use

8. Section 5 of the Act deals with money lender not to carry on business of money lending except for area under licence and except in accordance with the terms of (he licence and which reads as under:

5. No money lender shall carry on the business of money lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.

Section 10 of the Act deals with stay of suits by money lenders not holding licence. Sub-sections (1), (2), (3) and (4) of Section 10 read as under:

(1) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money lender in any suit filed by a money lender to which this Act applies unless the Court is satisfied that at the time when the loan or any part thereof to which the suit related was advanced, the money lender held a valid licence.

(2) 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 within a period of three months a licence on payment to the Registrar of all the arrears of the licence fees (and inspection fees) payable by him under this Act for the period commencing from the date on which he started the business of money lending or the expiry of six months from the date on which this Act comes into force, whichever is later, together with such penalty, not exceeding Rs. 500, as the Court may direct:

Provided that the Court is satisfied that the failure of the money lender to obtain a licence was due to any reasonable cause, the Court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money lender.

(3) The Court may, on sufficient cause being shown, from time to time, extend the period during which the money lender shall be required to produce a licence.

(4) If the money lender fails to produce the licence required under Sub-section (2) within the period, specified therein or within such period as may be extended under Sub-section (3), the Court shall dismiss the suit. If the money lender produces such licence within the aforesaid period, the Court shall proceed to hear the suit.

9. Thus, reading the definition of money lender, it is clear that the person or persons included therein should carry on business of money lending in the State or they should have their principal place of such business in the State and the business of money lending may be carried on alongwith any other business or it may be done exclusively, but essential ingredient is that it should be a business of money lending and it should constitute a regular act of advancing loans on

interest. Reading the aforesaid provisions, it is clear that no Court shall pass a decree in favour of a money lender in any suit unless the plaintiff held a valid licence at the date when the loan was advanced, meaning thereby that money lender-plaintiff should produce his licence showing that he had a valid licence on the relevant date. In case, it is found that money lender did not have a licence, the Court will grant him time for producing such certificate. It is to be noted that the certificate itself should be produced in the Court and this requirement of Section 10 is not enough if the money lender-plaintiff says that he held a valid licence. If the money lender does not produce the certificate itself, the suit should be dismissed provided that an application is made by the money lender during the pendency of the suit to produce a registration certificate and the same would be a valid compliance of the section. Therefore, the question which arises in the present case is whether the plaintiff is a money lender and that the amount advanced by him to the appellant is a loan? If yes, the further question is as to whether he has produced the licence before the Court and/ or whether he has applied for stay of the hearing of the suit to enable him to produce the licence?

10. In the instant case, the partner of the plaintiff firm Keshavlal Bhurabhai Exh. 31, in his examination-in-chief has stated that "Our firm does money lending business. We lend money for the purpose of business. We had lent Rs. 5,000/- to the defendant on 12-3-1970. At that very time, the defendant had given cheque to us. The cheque was post-dated and it was negotiable on 10-4-1970". He has further stated that "...There was an oral talk that the defendant will pay interest at the rate of 18% per annum Further, the defendant has not given any interest to me. In the plaint, I have claimed interest at the rate of 9%." In the cross-examination, he has in clear terms admitted that "I have not got any money lending licence. I have not got any licence under Shops and Establishments Act." The appellant Ramanlal Punjalal Shah has deposed that "The plaintiff did money lending work. I had borrowed money from the plaintiff three or four times. I had taken the loan on payment of interest at the rate of 3% per mensem. I paid one month's interest on Rs. 5,000/- at the rate of 36% per annum and took Rs. 4,550 in cash. The original cheque is at Exh. 32. I could not pay the loan amount within a month. I wrote a letter to the plaintiff. I also sent Rs. 450/- being interest for one month. I sent this amount through a Veterinary Officer Dr. Modi. The plaintiff did not accept interest and demanded loan amount." This is in substance the evidence on record. In view of this evidence, it is clear that the respondent-plaintiff is a money lender and has advanced a loan with interest and in view of the admission, the respondent does not possess a valid licence so also, the licence under Shops & Establishments Act. Further, it is also an admitted position that on 3-4 occasions in the past, the respondent had advanced a loan to the appellant. In view of the fact that the respondent did not have a licence, the question of production before the Court or applying for the stay of hearing of the suit to enable him to produce the licence does not arise. In this view of the factual position on record, it is clear that the respondent is a money lender and

doing business of money lending without having any valid licence and without licence, he is not entitled to carry on business as required u/s 5 of the Act. In view of this position, the learned Judge ought to have dismissed the suit u/s 10 of the Act. However, the learned trial Judge was of the view that in view of the admitted fact that the defendant had borrowed the money for the purpose of business as the defendant had undertaken cargo contract of milk from Ajod Dairy from Ahmedabad and he had borrowed money for the purpose of said business and therefore, the provisions of Bombay Money Lenders Act do not apply. Even though it may be that the defendant might have income from agriculture. In my view, the said finding is contrary to the evidence on record and the provisions of law. In my opinion the learned trial Judge has totally misread the evidence of the parties. It does not transpire from the evidence of Keshavlal Exh. 31 that the amount was lent to the appellant for the purpose of carting contract of milk from Ajod Dairy from Ahmedabad. As per his evidence, the plaintiff firm lent money for the purpose of the business and the appellant-defendant had taken a contract of transporting milk of Ajod Dairy and as he knew the appellant, he had lent Rs. 5,000/- on 12th December. Similarly, from the evidence of the appellant, it does not transpire that he had taken money from the respondent for the purpose of his business. In absence of any writing to the effect that the amount was borrowed for the purpose of business of carting contract, in my opinion, it is not correct to say that the appellant has borrowed the amount for the contract of transporting of milk. The fact that in past also, on three to four occasions, the appellant had taken loan from the respondent would suggest that apart from the business purpose, the respondent used to lend amount to the appellant and therefore, it is not correct to say that the suit transaction was only for the work undertaken by the appellant of transportation of milk.

11. In view of this, it is clear that the finding recorded by the learned trial Judge that the suit is not barred under the provisions of the Bombay Money Lenders Act is not proper. In my view, since the respondent was not having a valid licence for carrying on business of money lending, the suit is liable to be dismissed u/s 10 of the Act. Since the appeal is required to be allowed on this point alone, it is not necessary to answer other averments raised on behalf of the appellant-defendant. In the result, the appeal is allowed. The impugned judgment and decree passed by the learned Judge, City Civil Court, Ahmedabad in Civil Suit No. 1428 of 1973 is hereby quashed and set aside. The suit is dismissed. Appeal is allowed with no order as to costs.