

(2022) 09 CAL CK 0049
In the Calcutta High Court
Case No : G.A 1 Of 2021, C.S No. 28 Of 2021

Vikram Bachhawat (HUF)

APPELLANT

Vs

Sudha Kankaria

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 12 Rule 6

Citation : (2022) 09 CAL CK 0049

Hon'ble Judges : Ravi Krishan Kapur, J

Bench : Single Bench

Advocate : Satadeep Bhattacharya, Jai Kumar Surana, D. Surana, Subrata Goswami, D. Bhattacharjee, S. Ghosh

Judgement

Ravi Krishan Kapur, J

1. The suit is for recovery of money arising out of money lent and advanced. This application is filed for judgment upon admission.

2. Briefly, the facts of this case are as follows:

a) In or about 2015, the petitioner lent and advanced a sum of Rs. 40 lakhs to the respondent by way of a cheque. Upon presentation, the cheque was duly encashed by the respondent.

b) The agreement by and between the parties stipulated that the aforesaid financial accommodation was repayable along with interest at the rate of 15% per annum. Between 19 March, 2015 till 30 November, 2017, the respondent regularly paid the interest component in respect of the aforesaid loan on quarterly basis.

c) The last interest paid was for the period from 1 August 2017 till 30 November, 2017 being a sum of Rs. 2,00,548/-.

d) Thereafter, the respondent had also signed Statements of Loan Confirmation for the financial years ending 31st March, 2015, 31st March, 2016, 31st March,

2017 and 31st 2018 acknowledging her liability both towards principal and interest respectively.

e) It is alleged on behalf of the petitioner that, the aforesaid payments of interest along with the loan confirmation statements constitutes a clear, categorical and unequivocal admission of liability by the respondent towards both principal and interest.

f) Thereafter, the respondents began to defaulted in repayment of interest. Ultimately, the petitioner by a notice dated 9 September, 2019 was compelled to recall the entire loan as well as the outstanding interest forthwith.

g) In reply, to the notice, the respondent by a letter dated 19 September, 2019 contented that the aforesaid transaction was not a loan transaction. The said letter was duly replied to by a letter issued on behalf of the petitioner dated 14th January 2020. Hence, this suit.

3. On behalf of the respondent it is contended that, the petitioner being a Hindu Undivided Family (HUF) is not competent to institute this suit in its own name. It is further contended that, the aforesaid transaction between the parties is barred under the provisions of the Bengal Money Lenders Act, 1940. It is also alleged that the entire loan was financed through a broker, Shanti Kumar Surana and the same was negotiated by the deceased husband of the respondent. It is also contended that the respondent has handed over three antiques paintings and antique wall mirrors to the respondent in an attempt to square off the outstanding dues payable to the petitioner. Though, the petitioner has agreed to take the aforesaid paintings and mirrors in discharge of the entire outstanding dues, the petitioner refused to record the same in writing.

4. I have considered the submissions made on behalf of the parties.

5. The object of Order 12 Rule VI of the Code of Civil Procedure 1908 is to expedite trials and to enable a party to obtain a speedy judgement at least to the extent of the reliefs which have admitted by the defendant. This Rule can be invoked at any stage of the suit. The Rule is enabling, discretionary and permissive. Basically, the Rule permits the Court to sift through unworthy defences and relegate the parties to trial to only on that aspect of the suit which requires adjudication.

6. From the facts and circumstances of the case and the pleadings and documents relied on by the parties in my view, the admitted facts which emerge are as follows:

(a) The respondent has duly received and appropriated the entirety of the principal sum of Rs. 40 lakhs paid by the petitioner.

(b) The respondent has also made payment of the interest component for a substantial period which is a categorical admission of liability of the respondent.

(c) The respondent has also signed Confirmation of Accounts for the year ending

31st March, 2015, 31st March, 2016 and 31st March, 2017 and 31st March, 2018 which is a clear and categorical admission of liability by the respondent towards principal and interest.

7. Accordingly, in my view, the respondent has clearly, unambiguously and unequivocally admitted its liability to the petitioner both towards principal and towards interest. The claim of the petitioner is for a present debt and such debt has become repayable upon demand by the petitioner.

8. I also do not find any merit in the defence raised on behalf of the respondent. There is no evidence whatsoever to substantiate the fact that the petitioner is a money lender or is in the business of money lending as contemplated under the Bengal Money Lenders Act, 1940 [Sitaram Poddar vs Bhagirath Chowdhury (2011) 2 CHN 969 at para 17, Bipin Vazirani Vs. V. Raheja Design Construction Private Limited and Anr. 2018 SCC Online Bom 19972 at para 7).

9. It is next contended that the suit is not maintainable on the ground that the same has been instituted in the name of the HUF. Thus, it is urged that since the HUF is not a juristic entity it lacks competence to file a suit. I find that, though the suit is filed in the name of the HUF, it is the Karta who is described as representing the HUF both in the body of the plaint and the cause title. Thus, the Karta is clearly shown and named. The suit has been filed by the HUF through the Karta. The transaction has been entered into by the Karta and it is reasonably clear who the real parties to this suit are. Thus, I find no merit in this contention (Shri Ganeshmull Surana vs Nagraj Surana AIR 1953 Calcutta 294 at para 17).

10. The bare denial of the respondent in disputing the signature in the loan confirmation statements is also without substance. There is also no substance in the defence that the respondent has handed over three antique paintings and three antique wall mirrors to square up the loan of the petitioner or such agreement was entered into by and between the parties. Admittedly, no written agreement exists between the parties wherefrom it appears that there was any such agreement by and between the parties. Thus, no credence can be given to the defence. In any event, the story of the respondent is contradictory and self defeating. If there is no outstanding amount repayable to the petitioner, then why an attempt to square off the same? Accordingly, I do not believe the story put forward by the defendant.

11. In view of the aforesaid, there shall be a decree for judgment upon admission for a sum of Rs.58,50,137/- particulars whereof appear at paragraph 17 of the application. The remaining claim of the respondent stands relegated to trial. Insofar as the prayer for security and injunction is concerned, liberty is granted to the plaintiff to take necessary steps in accordance with law, if the decree remains unsatisfied.

12. With the aforesaid directions, GA 1/2021 stands allowed.