

RAJASTHAN HIGH COURT

Mangu Singh

Vs.

Mehra Ram

Civil Special Appeal No. 25 of 1995

(N.N. Mathur and Harbans Lal, JJ.)

08.01.2002

JUDGEMENT

Mathur, J.

1. This special appeal is directed against the judgment of the learned single Judge dated 1-3-95 dismissing the Civil First Appeal arising from the judgment and decree dated 20-12-94 passed by the Additional District Judge, Barmer in Civil Regular Suit No. 8/91.

2. Briefly stated the facts of the case are that the plaintiff-appellant filed a money suit for recovery of Rs. 70,000/- with interest thereon stating *inter alia* that on 1-6-89 he advanced a loan of Rs. 70,000/- with interest at the rate of Rs. 1/- per cent per month. The defendant executed a promissory note and receipt in favor of the plaintiff. It was also averred that the defendant Mehra Ram took the loan in order to facilitate one of his relative Chunnilal to purchase an automobile. In spite of repeated demands, the amount was not returned. Thus, according to the plaintiff, he was entitled to a decree for principal amount of Rs. 70,000/- and Rs. 14,000/- towards interest in total Rs. 84,000/-. The defendant filed a written statement denying the plaintiff's allegations. Thus, the defense was of total denial. He also took a plea that suit was not maintainable as the plaintiff was not holding a money-lending licence as required by Sections 22 and 23 of the Rajasthan Money Lenders Act, 1963 (hereinafter referred to as the Act of 1963). On the material controversy the trial Court framed 9 issues. The English translation of the issues is given as follows :-

1. Whether the defendant Mehra Ram took the loan of Rs. 70,000/- from the plaintiff for purchasing a motor vehicle for his relative Chunnilal and executed a

promissory note and a receipt in favor of the plaintiff on 1-6-89 ?

2. Whether the plaintiff is not engaged in the business of money lending and whether the suit is maintainable in the absence of a money lending license?
3. Whether the plaintiff-appellant has complied with the provisions of Secs. 22 and 23 of the Act. If not what is its effect on the suit?
4. Whether the defendant is an agricultural labor and his livelihood is principally depending on agriculture hence the suit is not maintainable?
5. Whether pronote is not properly stamped as per law and as such not admissible in evidence?
6. Whether Chunnilal is a necessary party?
7. Whether there is immaterial alteration in the pronote and the receipt?
8. Whether the defendant is entitled to special cost?
9. Relief?

3. The plaintiff in support of his case examined himself as P.W.1, P.W. 2 Madan Kumar, P.W. 3 Hanumandas, P.W. 4 Daulat Singh and P.W. 5 Mehra Ram and produced Promissory Note Ex. P.1, dated 1-6-89, Receipt Ex. P. 2, dated 1-6-89 and the registered notice Ex. P3, dated 28-1-91. The defendant Mehra Ram examined himself as D.W. 1, Ram Singh D. W. 2, Chunnilal D.W. 3 and Kushtha Ram D.W. 4 The trial Court decided all the issues in favor of the plaintiff except Issue Nos. 2, 3 and 9. While deciding the Issue No. 1, the trial Court held that the plaintiff succeeded in establishing that a sum of Rs. 70,000/- was advanced by the plaintiff to the defendant and in token of that a promissory note and a receipt Ex. P1 and Ex. P2 were executed. As regards Issue No. 4, the trial Court found that the defendant failed to establish that he was an agriculturist and as such the suit was not maintainable against him. The issue with regard to proper stamping of the Pronote i.e. Issue No. 5 was also decided in favor of the plaintiff. However, in view of the finding on Issue Nos. 2 and 3 the trial Court dismissed the suit by judgment and decree dated 20-12-94. The plaintiff preferred First Appeal. The learned single Judge was of the view that the fact that plaintiff lent Rs. 70,000/- to the respondent defendant and to the respondent he had also lent Rs. 27,000/- to one Bishna Ram on pronote was sufficient to hold the plaintiff, a money lender. The learned counsel placed reliance on a decision of this Court in *Gaurishanker v. Magharam reported in* ¹ in support of the contention that the mere fact that the money was advanced on interest on more than one occasion would not necessarily import that the plaintiff was engaged in business of advancing loan was rejected on the ground of non-application of the judgment to the facts of the case.

The learned single Judge also rejected the contention that ordinarily a civil first appeal should be admitted and decided on merit issue wise. This contention was rejected by the learned single judge on the ground that unless there is an arguable case, it is not obligatory upon the Court to admit the first appeal.

4. Mr. M. L. Shreemali learned counsel for the appellant has reiterated his contention raised before the learned single Judge to the effect that simply because the money was advanced on interest for more than one occasion is not sufficient to bring the plaintiff within the definition of money lender" under Section 2 (10) of the Act of 1963. It is argued by Mr. Shreemali that his case is squarely covered by the decision of this Court in *Gaurishanker v. Magharam* (supra). It is submitted that the said decision is a binding precedent on a Bench hearing the appeal sitting single. On the other hand Mr. S. N. Sharma appearing for the respondent has supported the judgment of the learned single Judge as well as of the trial Court.

5. We have considered the rival contentions. In order to appreciate the controversy involved, it will be useful to read definition of money lender" provided under Section 2 (10) of the Act of 1963, which is extracted as follows :-

2 (10). 'money-lender' means

(i) an individual or

(ii) an undivided Hindu family, or

(iii) a company (not being a banking company as defined in Section 5 of the Banking Regulation Act, 1949), body or institution other than such of them as may, by notification in the Official Gazette, be exempted from the provisions of this Act by the State Government on being satisfied that it is necessary or expedient so to do in public interest, or

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

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

(b) supplies, as a trader or dealer, goods other than agricultural goods on credit on condition of payment of interest by the buyer at a rate higher than that prescribed in Section 29 in case the payment of sale price is not made within the stipulated period; or

(c) has his or its principal place of such business in the State;"

The expression business of money-lending" defined in sub-clause (2) of Section 2 also reads as follows :-

business of money-lending' means the business of advancing loans whether or

not in connection with or in addition to any other business;"

The word business" import a notion of a system, repetition and continuity. In 1996 (1) KB 584, it is observed, thus :

Speaking generally, a man who carried on a money-lending business is one who is ready and willing to lend to all and sundry, provided that they are from his point of view eligible."

To the same effect are the observations contained in (1989) AC 325 at p. 343. Lord Morris observed as follows:

There can be no definition of the words exercising a trade". It is only another mode of expressing carrying on business" but it certainly carried with it the meaning that the business or trade must be habitually or systematically exercised and that it cannot apply to isolated transactions."

The Apex Court in *Barendra Prasad Ray v. The Income-tax Officer reported in* ² has considered the expression business" in the back ground of the provisions of Income-tax Act and observed as follows:

It is an activity carried on continuously and systematically by a person by the application of his labor or skill with a view to earning an income. It does not necessarily mean trade or manufacture only and includes within its scope professions, vocations and calling from a fairly long time."

In *Manipur Administration v. Nila Chandra Singh reported in* ³ the Court observed as follows:-

A single transaction does not constitute business. The concept of business postulates continuity of transactions."

6. In *Narain Swadeshi Mills v. Commissioner of Excess Profits Tax reported in* ⁴ the Apex Court explained the expression business" as follows:-

Business connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose."

7. A Full Bench of the Allahabad High Court in a case reported in 17 ALJ 1147 : (AIR 1919 Allahabad 13 (2) has explained the expression business" as follows :-

an element of continuity and habit is essential to constitute the exercise of a profession or business"

8. Thus, the word business" imports the notion of system, repetition and continuity. The fact that money was advanced on interest for more than one occasion will not bring the plaintiff within the mischief of the word money- lender". The burden is on defendant to establish that the person from whom he has taken the loan is engaged in the business of advancing loan and he has been carrying on the said business systematically and there is a continuity therein. The person advancing the loan will not fall within the definition of money-lender" simply because on one or few isolated occasions he lent money to a stranger.

9. In the instant case the trial Court has found the appellant money-lender simply on the ground that he had advanced loan on interest to the defendant and on earlier occasion 3 years back he had advanced a sum of Rs. 27,000/- to one Bishna Ram. The appreciation of evidence by the trial Court is erroneous inasmuch as it is contrary to the binding decision of this Court in *Gaurishanker v. Magharam* (supra). The learned single Judge has also committed an error in dismissing the appeal at the admission stage without properly appreciating the law laid down by the learned single Judge of this Court in *Gaurishankar v. Magharam* (supra). In our view, it was not only an arguable case but a strong arguable case which deserved admission of the appeal being a regular first appeal under Section 96 C.P.C.

10. Consequently, we allow this appeal, set aside the judgment of the learned single Judge dated 1-3-95 as well as the judgment and decree dated 20-12-94 passed by the learned Additional District Judge, Barmer in Civil Suit No. 8/91. The plaintiff's suit is decreed for the principal amount of Rs. 70,000/- with interest at the rate of 12% per annum.

Appeal allowed.

Cases Referred.

1. 1974 W.L.N. 93

2. AIR 1981 SC 1047
3. AIR 1964 SC 153: (1965 (1) Cri LJ 120)
4. AIR 1955 SC 176