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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 27175 OF 2021
IN
COMMERCIAL SUIT NO. 1532 OF 2018

Hubtown Limited … Applicant

In the matter between

Ashok Commercial Enterprises … Plaintiff

Vs.

Hubtown Limited … Defendant

Mr. Navroz Seervai, Senior Advocate a/w Mr. Prateek Sakseria, Senior Advocate a/w Mr. Nishit Dhruva, Mr. Yash Dhruva, Ms. Niyati Mechant, Mr. Harsh Sheth i/b MDP Legal for the Applicant in IA(L)/27175/2021/Defendant.

Mr. Gaurav Joshi, Senior Advocate a/w Mr. Gaurav Mehta, Mr. Chaitanya D. Mehta, Ms. Sonali Aggarwal i/b M/s. Dhruve Liladhar & Co. for the Plaintiff.

CORAM : GAURI GODSE, J.

RESERVED ON : 16th OCTOBER 2025

PRONOUNCED ON : 21st JANUARY 2026

JUDGMENT:

BASIC FACTS:

1. This application is filed by the defendant under Order VII Rule 11(d) of the Civil Procedure Code ('CPC') for the rejection

of the plaint on the ground that the suit is barred in view of Section 13 of the Maharashtra Money Lending (Regulation) Act, 2014 ('the said Act'). The suit is filed for recovery of money against the defendant based on the dishonoured cheques issued by the defendant and promissory notes executed by the defendant.

SUBMISSIONS ON BEHALF OF THE DEFENDANT:

2. The submissions made by learned senior counsel for the defendant are summarised as under:

a) As per the pleadings in the plaint, the plaintiff is engaged in the business of builder finance and claims to have advanced loans to the defendant from 2011-2012 at interest rates up to 36% per annum. The plaintiff has pleaded that a loan was granted to the defendant in 2011-2012 for a sum of approximately Rs. 48 Crores, which was subsequently increased to approximately Rs. 510 Crores. The defendant unilaterally issued post-dated cheques for repayment of the loan and executed demand promissory notes from time to time. The cheques, when presented, were dishonoured for the reason 'insufficient

funds'. Thus, according to the plaintiff, the suit is filed on the basis of dishonoured cheques and on the defendant's letter admitting acceptance of the loan and liability to repay.

b) The plaintiff has not pleaded that it possesses a mandatory license as required under the said Act. Thus, the plaintiff has deliberately suppressed in the suit that it does not possess a mandatory license. It is only by clever drafting that the factual aspect regarding the money-lending license is suppressed in the plaint. Thus, on a meaningful reading of the pleadings in the plaint, it is apparent that the plaintiff is engaged in the business of money lending without a licence. The plaintiff has allegedly granted loans and advanced interest funds to the defendant at different rates. Accordingly, the plaintiff contends that the defendant has issued demand promissory notes for repayment of the alleged loans. However, the plaintiff has wrongly captioned the notes as bills of exchange.

c) Under Section 13 of the said Act, there is a bar to pass a

decree in favour of a money-lender when the money-lender does not hold a valid licence. Thus, Section 13 of the said Act bars a Court from passing a decree in a suit filed by an unregistered money-lender. Therefore, the plaint is liable to be rejected under Order VII Rule 11 (d) of CPC. Learned senior counsel for the defendant relied upon the decision of this Court in the case of ***Fauzan Shaikh Vs. State of Maharashtra***[1]**,** and the Apex Court's decision in the case of ***RBANMS Educational Institution Vs. B. Gunashekar***[2]**.** Learned senior counsel for the defendant, therefore, submits that the suit is an abuse of judicial process where the plaintiff has, by clever drafting, espoused a cause of action which is barred by Section 13 of the said Act.

d) The exclusion under Section 2(13)(j) would not assist the plaintiff in the facts of the present case. According to the learned senior counsel for the defendant, as per the scheme of Section 2(13) of the said Act, a loan means an advance at an interest. Clause (j) of Section 2(13) of the

1 Criminal PIL (St.) No. 41 of 2019
2 2025 SCC OnLine SC 793

said Act uses the term ‘advance’ as contradistinguished with other clauses of Section 2(13) which use the terms ‘loan’ or ‘deposit’. Thus, only interest-free advances/ friendly advances without interest are excluded from the definition of ‘loan’ under Section 2(13) of the Act. Therefore, when there is a component of interest in monies given by a money lender to the debtor, the money lender is covered by the rigours of the said Act. In such a situation, the factum of loan being given on the basis of a negotiable instrument or otherwise makes no difference since a component of interest is involved, and hence, such a loan is not excluded from the definition of ‘loan’ under Section 2(13) of the Act.

e) Thus, according to the learned senior counsel for the defendant, the assertions in the plaint to the effect that loans were advanced at interest rates up to 36% per annum, it is evident that the plaintiff is engaged in continuous and repetitive business of money lending and has advanced monies ‘at interest’ to the defendant as a part of its business of money lending. Thus, according to

the learned senior counsel for the defendant, the loans given by the plaintiff to the defendant are not an advance and therefore not excluded by Section 2(13)(j) of the said Act.

f) Without prejudice to the aforesaid submissions regarding non-applicability of the exceptions under the definition of 'loan', learned senior counsel for the defendant submitted that the plaintiff has pleaded that the alleged loan given is on the basis of a 'demand promissory note'. Hence, the exclusion under Section 2(13)(j) of the said Act itself excludes an advance. Thus, if an advance is given on the basis of 'promissory note', it is a 'loan' within the meaning of Section 2(13) of the said Act and hence, is not covered by any of the exclusions.

g) As per the plaintiff's pleading that a loan was granted by the plaintiff to the defendant in 2011-2012 for a sum of Rs.48 Crores, there is no pleading whatsoever on the dates on which the monies were allegedly disbursed by the plaintiff to the defendant, increasing the sum to Rs.510 Crores. The plaintiff is otherwise in the business

of lending loans and has admittedly characterised the transactions as loans; thus, there is no nexus between the loan and the negotiable instrument issued by the defendant. Thus, based on the pleadings, it is evident that the loan was not given based on a negotiable instrument. Hence, the plaintiff would not be entitled to seek the benefit of the exclusion under Section 2(13)(j) of the said Act. To support his submissions, learned senior counsel for the defendant relied on the decision in ***Khyati Realtors Pvt. Ltd Vs. M/s. Zenal Construction Pvt. Ltd.***[3]

h) According to the plaintiff's pleadings, the dishonoured cheques on which the suit is purportedly based are dated 1st April 2018 and issued for amounts of Rs. 68.92 Crores and Rs. 499.92 Crores, respectively. Section 5, read with Section 6, of the Negotiable Instruments Act provides that a cheque is a bill of exchange for an 'ascertained sum of money'. The plaintiff has claimed Rs.510 Crores as principal and Rs.78.43 Crores as balance interest. However, since no rate of interest is specified on the alleged negotiable instrument on which the suit is filed,

3 Company Petition No. 243 of 2012

the interest is payable at 18% per annum in terms of Section 80 of the Negotiable Instruments Act. The plaintiff thus cannot claim shelter of the alleged exclusion under Section 2(13)(j) of the said Act by contending that the 'loan' is given on the basis of a negotiable instrument, i.e. the dishonoured cheques.

i) The plaintiff's claim is based on a letter dated 13th July 2018, where the defendant allegedly assured, agreed and promised to repay the amount and issued post-dated cheques and promissory notes. However, the plaintiff also contends that such post-dated cheques were unilateral and not acceptable to the plaintiff. Hence, it is evident from the particulars of the claim and in view of the plaintiff not being *ad idem* with the defendants' terms contained in the letter dated 13th July 2018, no written contract can be said to be in existence to maintain the suit. Hence, based on such a letter, a summary suit under Order XXXVII of CPC would not be maintainable. Hence, the suit is not filed to claim a legally enforceable debt. The plaintiff being an unregistered moneylender, the suit

would therefore be barred under Section 13 of the said Act.

j) Learned senior counsel for the defendant submitted that, as held by this Court in the case of ***Marine Container Services (I) Pvt. Ltd. Vs. Rushabh Precision Bearings Ltd.***[4]**,** a suit filed by an unregistered money lender is not maintainable since the recovery is barred and no relief can be granted. Learned senior counsel for the defendant therefore submitted that the plaint is liable to be rejected in view of the bar under Section 13 of the said Act.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

3. Learned senior counsel for the plaintiff opposed the prayer for rejection of the plaint on the following submissions:

a) Learned senior counsel for the plaintiff relied upon the relevant averments in the plaint regarding post-dated cheques issued by the defendant and letters issued by the defendant promising and assuring repayment of the loan amount. Thus, even if there is no licence as alleged by the defendant, the plaintiff would fall under the

4 [1999 (3) Bom. C. R. 760]

exceptions to clause (j) of sub-section (13) of Section 2 of the said Act. Hence, Section 13 would have no application in the present suit.

b) As per the pleadings in paragraphs 4, 5, 17, 18, 21 and 25 of the plaint, the plaintiff advanced loans on the basis of post-dated cheques. Since the post-dated cheques were dishonoured, the plaintiff also filed a criminal complaint. In paragraph 22 of the plaint, it is therefore contended that in view of the dishonoured cheques, the amount as per the cheques has become due and payable to the plaintiff.

c) To support his submissions, learned senior counsel for the plaintiff relied upon the decision of this Court in the case of ***Parekh Aluminex Ltd. Vs. Ashok Commercial Enterprises***[5] and the decision of learned single Judge in the case of ***Ashok Commercial Enterprises and Anr. Vs. Kamla Shakti Developers & Ors.***[6]. On similar propositions, learned senior counsel for the plaintiff relied upon the recent decision of the Hon'ble Division Bench of

5 2014 SCC OnLine Bom 2304
6 Summons for Judgment No. 89 of 2018 in COMSS No.472 of 2016

this Court in the case of ***Deepak Bhagwandas Raheja Vs. Tikamdas & Associates***[7]***.***

d) Learned senior counsel for the plaintiff submits that the Division Bench of this Court in the case of ***Deepak Raheja*** has explained the bar under Section 13 of the said Act. It is held that an unlicensed money lender would face the restrictions on maintaining a suit for recovery under Section 13 of the said Act, but that would require the jurisdictional fact of his being a money lender in the context of the objectives of the legislation. The decision of the Division Bench in the case of ***Fauzan Shaikh*** is not a lucid declaration that any and every advancement of monies at interest, which is on the basis of a negotiable instrument, would automatically become a loan by a money lender under Section 2(13) of the said Act. It is submitted that if such a submission is accepted, the provisions of Section 2(13)(j) of the said Act would be rendered otiose.

e) Learned senior counsel for the plaintiff, therefore, submits

7 Commercial Appeal (L) No. 15455 of 2023 in COMSS No. 311 of 2020

that the suit filed based on the dishonoured cheques and the promissory notes executed by the defendant would not be barred in view of Section 13 of the said Act. He submits that the plaintiff's case falls under the exception of clause (j) of sub-section (13) of Section 2 of the said Act. Hence, the plaintiff was not under an obligation to register as a moneylender. Therefore, there is no question of rejection of the plaint on the ground that it is barred in view of Section 13 of the said Act.

SUBMISSIONS IN REJOINDER ON BEHALF OF THE DEFENDANT:

4. In response to the submissions made by learned senior counsel for the plaintiff by relying upon the decision in the case of ***Ashok Commercial Enterprises***, the learned senior counsel for the defendant submitted that the suit in the said case was filed much prior to the declaration of law in the case of ***Fauzan Shaikh*** and thus cannot be considered. The suit in the case of ***Ashok Commercial Enterprises*** was admittedly and undisputedly based on a negotiable instrument and was not founded on promissory notes. Hence, the decisions relied upon

by the learned senior counsel for the plaintiff would not be applicable to the facts of the present case. So far as the decision in the case of ***Deepak Raheja*** is concerned, the suit was admittedly and undisputedly based on bills of exchange and dishonoured cheques and not founded on promissory notes. Hence, the suit was a loan recovery action of an unregistered money lender who was admittedly engaged in the business of money lending. In the case of ***Deepak Raheja,*** the defendant failed to establish that the plaintiff therein was a money lender. However, in the present suit, the plaintiff has pleaded that the plaintiff is in the business of money lending. Thus, the decisions would not be applicable to the facts of the present case. The judgment in the case of ***Fauzan Shaikh*** is distinguished by the Division Bench in the case of ***Deepak Raheja*** as the suit was filed on the basis of a negotiable instrument. However, in the present suit, since the plaintiff is admittedly in the business of money lending, reliance on the decision of ***Deepak Raheja*** is clearly distinguishable and misplaced in the present facts. Hence, according to the learned senior counsel for the defendant, the plaint is liable to be rejected as barred under Section 13 of the said Act.

ANALYSIS AND CONCLUSIONS:

5. I have carefully perused the pleadings in the plaint and the supporting documents. The plaintiff has pleaded that he is engaged in the business as an importer, exporter, and manufacturer's representative, investment in real estate and builder finance. The plaintiff contended that the defendant, for its business purpose and in consideration of the defendant agreeing to pay to the plaintiff interest for the financial years 2011-2012 and 2012-2013 at 21% per annum and subsequently at different rates of interest as agreed upon, the plaintiff granted short-term loans to the defendant for its business-related requirements. Accordingly, the defendant, by letter dated 25th April 2012, confirmed that, as per the books of account of the defendant as on 31st March 2012, a sum of Rs. 48 Crores is standing to the credit of the plaintiff's account. The plaintiff accordingly granted a further business loan. The defendant issued post-dated cheques for repayment towards the loan. The defendant also executed a promissory note dated 1st April 2018, payable on demand for Rs. 510,24,22,993/- and unilaterally fixed the due date of 1st April 2019. The plaintiff has

also relied upon the demand promissory note dated 1st April 2017, promising to pay, on demand, the principal sum of Rs.357,00,00,000/- along with interest at the rate 36% per annum. The plaintiff relies upon the promissory notes and the cheques issued.

6. The plaintiff has therefore relied upon letters dated 7th June 2017, 27th June 2017, 28th June 2017, 14th September 2017, 1st March 2018, 1st April 2018, 16th April 2018, and 19th June 2018, calling upon the defendant to make payment of the due amount. The plaintiff has further pleaded that the defendant, by its letter dated 2nd November 2017, acknowledged and confirmed receipt of a business loan, which was due and payable. Accordingly, for the purpose of repayment of Rs.499,92,00,000/-, a cheque dated 1st April 2018 was issued, and the defendant assured that the cheque would be honoured by issuing a letter dated 2nd November 2017. The two cheques were accordingly deposited. However, the same were dishonoured for the reason ‘funds insufficient’. Hence, the plaintiff has filed a private complaint under Section 138 of the Negotiable Instruments Act. In such circumstances, the plaintiff

has filed the present suit for recovery of the principal amount with interest.

7. The plaintiff has therefore pleaded that the suit is filed to recover a liquidated sum of money based on the dishonoured cheques and the letters issued by the defendant unconditionally admitting acceptance of the loan and its liability to repay. Thus, from the plaintiff's pleadings, it is clear that the plaintiff has filed a suit based on the dishonoured cheques and the promissory notes executed by the defendant.

8. The plaintiff has relied upon the definition of 'loan' under Section 2(13) of the said Act. The exception in clause (j) of sub-section (13) of Section 2 is relied upon by the learned senior counsel for the plaintiff to contend that an advance of any sum exceeding Rs.3 Lakhs made on the basis of a negotiable instrument other than a promissory note is covered under the exception to the definition of the loan, meaning an advance at interest. It is therefore contended on behalf of the plaintiff that, in view of the exception under clause (j), the money advanced by the plaintiff is not covered under the definition of loan defined under the said Act. Hence, the plaintiff is not required to

be registered as a money lender. Hence, the bar under Section 13 is not applicable to the plaintiff's case.

9. In ***Deepak Raheja***, the Division Bench of this Court held that Section 13 of the said Act stipulates that no Court shall pass a decree in favour of a money lender in any suit unless a Court is satisfied that at the time when the loan or any part thereof to which the suit relates was lent, the money lender held a valid licence, and if the Court is satisfied that the money lender did not hold valid licence it shall dismiss the suit. Thus, it is held that on a plain reading of the definition of the word 'loan', an 'advance' of any sum exceeding Rs. 3 Lakhs made on the basis of a negotiable instrument would not fall within the definition of the word 'loan' as defined in the said Act. It is further held that once there is no loan involved, there is no question of the rigours of Section 13 being attracted at all because the *sine qua non* for the provisions of Section 13(1) to apply is that a money lender ought to have advanced a loan and at the time it was lent, such money lender did not have a valid licence. It is therefore held that "To put it in a nutshell, without a *loan* (as defined in the *Money Lending Act of 2014*

itself) being involved, there is no bar on any court to pass a decree".

10. The Division Bench in ***Deepak Raheja,*** on considering the facts of the said case, held that, even assuming that the bills of exchange were given as collateral security, they cannot be said not to form the basis of the loan, as loans are often given on the basis of collateral security. Hence, the suit filed on the promissory notes and the dishonoured cheques was held to be squarely covered by the exclusion in clause (j) of Section 2(13) of the said Act. The Division Bench further held that the onus of proving or establishing even prima facie at the stage of summons for judgment that the plaintiff carries on the business of money lending is on the defendant. It is further observed that merely advancing money to people does not ipso facto make a party a money lender, and that before he can be termed a money lender, he has to fall within the parameters of the said Act.

11. The Division Bench in ***Deepak Raheja***, discussed the legal principles settled in ***Fauzan Shaikh***, where another Division Bench of this Court was dealing with a challenge to a

constitutional validity of clauses (j) and (k) of Section 2(13) of the said Act, which challenge had been mounted on the premise that there was manifestly, arbitrary and unconstitutional discrimination between loans given without interest and loans given with interest. It was observed by the Division Bench in ***Deepak Raheja*** that the decision in ***Fauzan Shaikh*** is by no means a blanket declaration that any and every advancement of money is for interest, which is on the basis of negotiable instruments, would automatically become 'a loan' by a money lender under Section 2(13) of the said Act. The Division Bench, therefore, held that if such an interpretation is accepted, then the provisions of section 2(13)(j) would be rendered *otiose*.

12. The learned Division Bench in ***Fauzan Shaikh*** held that the person who grants a loan or advances money at interest on the basis of a negotiable instrument other than the promissory note or on the basis of hundi is not covered under the exclusion under clause (j) and (k) of sub-section (13) of Section 2 of the said Act. Therefore, the grant of a loan or the advancement of money at interest on the basis of a promissory note or hundi is

covered by the exceptions.

13. In ***Khyati Realtors***, the learned Single Judge of this Court was dealing with a company petition for winding up. The respondent in the said petition, while opposing winding up, raised one of the defences that the petitioner was a money lender carrying on the business of money lending, and that the transaction referred to in the company petition was a loan transaction within the meaning of the Bombay Money Lenders Act, 1947. This court held that when a defence of money lending is available to the respondent, he must conclusively prove that the petitioner is engaged in the business of money lending or if enough material is placed on record to draw an inference that the petitioner is engaged in a money lending business, it can only be dispelled by leading detailed evidence. It is observed that there is a distinction between the petitioner being in the money lending business and the transaction being a money lending transaction. The decision in ***Marine Container Services*** was also referred, which held that for a transaction to be a money lending business, there must be a system, repetition, and continuity and that an isolated transaction will

not be affected by the embargo under the said Act. This Court held that on the basic facts, coupled with the assertion regarding the business of money lending without a license, are placed on record, it would be up to the petitioner to show that it is not so. Therefore, it was held that the issue would require examination of evidence and that, when the burden shifted to the petitioner, the petitioner would have to lead evidence to discharge it, and such an exercise cannot be done in the summary jurisdiction while entertaining a petition for winding up.

14. In Summary Suit No. 203 of 2013, filed by the plaintiff against Parekh Aluminex Limited on the basis of dishonoured cheques, while granting conditional leave to defend to the defendant therein, it was held by the learned Single Judge that a loan advanced against a negotiable instrument is, in terms, excepted from the application of the Bombay Money Lenders Act, 1946. The 1946 Act is repealed by the said Act of 2014. This decision was confirmed by the learned Division Bench, in ***Parekh Aluminex,*** by holding that Section 2(9)(f) of the 1946 Act expressly excludes an advance made on the basis of the

negotiable instrument as defined under the Negotiable Instruments Act, from the definition of the term loan. The exception under clause (f) of the definition of loan in Section 2(9) of the 1946 Act is similar to Section 2(13) (j) of the 2014 Act. In another suit filed by the plaintiff against ***Kamla Shakti Developers***, the learned Single Judge, while deciding the summons for judgment, referred to the legal principles settled in ***Parekh Aluminex*** and held that the allegation against the plaintiff to be an unlicensed money lender is made in more than one case and in each case a finding has been returned in favour of the plaintiff that they are not money lenders.

15. Thus, based on the plaintiff's pleadings, when the suit is filed on the basis of dishonoured cheques and the promissory notes executed by the defendant, it cannot be ascertained at the preliminary stage under Order VII Rule 11 of the CPC whether the money advanced by the plaintiff and the transactions between the parties would not fall under the definition of 'loan' under Section 2(13) of the said Act for applying the bar as contemplated under Section 13 of the said Act. As held by the learned Division Bench in ***Deepak Raheja,***

unless a Court is satisfied that at the time when the loan or any part thereof to which the suit relates was lent, the money lender held a valid licence, the suit cannot be dismissed. Thus, without a loan as defined in the said Act being involved, there is no bar on any court to pass a decree.

16. As held by the learned Single Judge of this Court in ***Khyati Realtors***, the allegation of engaging in the business of money lending can only be dispelled by leading detailed evidence, and the issue regarding the assertion of the business of money lending without a license would require examination of evidence, and such an exercise cannot be done in a summary manner.

17. The Hon'ble Apex Court in ***Correspondence, RBANMS Educational Institution***, referred and relied upon the legal principles settled by the Hon'ble Apex Court in ***Dahiben Vs Arvindbhai Bhanushali***[8], and held that it is a bounden duty on the Court to discern and identify a fictitious suit which on the face of it would be barred. In the present case, the applicability of the bar under Section 13 of the said Act cannot be

8 (2020) 7 SCC 366

ascertained at this stage and warrants a trial. In ***Dahiben***, the Hon'ble Apex Court held that the power of the Court to reject the plaint is a drastic measure, as it terminates a civil action at the threshold, and therefore must be exercised strictly in accordance with the conditions enumerated under Order VII Rule 11 of the CPC.

18. Therefore, on a meaningful reading of the plaint, the basic question to be decided while dealing with the application filed under Order VII Rule 11 of the Code is whether based on the averments in the plaint and the supporting documents the suit can be held as bar under any law or something purely illusory has been stated with a view to getting out of Order VII Rule 11 of the CPC. In the amendments made applicable to the commercial division and commercial courts, the provision of Order VII Rule 11 of the CPC are not amended, and thus the legal principles for rejection of the plaint in Order VII Rule 11 of the CPC would also apply to the suits filed in the commercial courts and commercial division.

19. As per the well-settled legal principles discussed above, a suit filed on the promissory notes and the dishonoured

cheques is held to be squarely covered by the exclusion in clause (j) of Section 2(13) of the said Act. The onus of proving or establishing, even prima facie, that the plaintiff carries on the business of money lending is on the defendant. Merely advancing money to people does not ipso facto make a party a money lender; hence, the issue whether the plaintiff can be termed a money lender, within the parameters of the said Act, for applying the bar contemplated under Section 13 of the said Act cannot be decided at the stage of Order VII Rule 11 of the CPC. Hence, in the present case, the plaint cannot be rejected at the threshold.

20. For the reasons recorded above, the interim application is rejected.

(GAURI GODSE, J.)