

Durgadas Devidas Rathod Vs. Vithal Sidram Udate and ors.

Durgadas Devidas Rathod Vs. Vithal Sidram Udate and ors.

SooperKanoon Citation : sooperkanoon.com/331513

Court : Mumbai

Decided On : Feb-10-1971

Reported in : AIR1972Bom92; (1971)73BOMLR751; ILR1972Bom203; 1971MhLJ930

Judge : K.K. Desai, J.

Acts : Bombay Money Lenders Act, 1947 - Sections 2(9), 18, 19, 21, 23 and 25

Appeal No. : A.F.A.D. No. 301 of 1967

Appellant : Durgadas Devidas Rathod

Respondent : Vithal Sidram Udate and ors.

Advocate for Pet/Ap. : U.R. Lalit, Adv.

Judgement :

1. Issues Nos. 1 and 3 before the trial Court were :

'(1) Whether the provisions of the Bombay Money - Lenders Act are applicable to the suit transactions ?

(3) Whether the plaintiff proves compliance of Sections 18 and 19 of the Act ?'

Though issue No. 1 was answered in affirmative, issue No. 3 was answered in the negative. Under the provisions of the above Act, the trial Court deprived the

plaintiff - mortgagee of interest that accrued due on the mortgage till the date of the institution of the suit. In that connection, before the lower appellate Court, the contention that was raised on behalf of the appellant - plaintiff was that the mortgage in suit had been executed in connection with the loan advanced to traders. The trial Court was, therefore, wrong in its affirmative finding on issue No. 1 and in depriving the plaintiff of interest due till the date of the institution of the suit. The lower appellate Court held that loan would be to a trader when it was advanced for purposes of trade. In order to succeed in his contention, it was necessary for the plaintiff to prove that the suit - loan and mortgage were made for purposes of trade of the defendants. There was no such evidence. The loan had not been advanced for purposes of trade and accordingly the learned Judge negated the above contention.

2. Mr. Lalit has rightly contended that the above finding of the lower appellate Court is incorrect. There is clear and uncontradicted evidence of the plaintiff in this case that Sidram and his children being defendants Nos. 1 to 6 and his defendant No. 7, had taken the mortgage loan of Rs. 4,000/-. Sidram and the defendants were traders. There was no cross - examination of the evidence of the plaintiff. It is, therefore, clear that Sidram and his sons, defendants Nos. 1 to 6, were traders. They carried on a joint family business and as such were dealing in saris. It is true that some of the defendants Nos. 1 to 6 were at the date of the mortgage minors. It is true that defendant No. 7 was merely the wife of Sidram and was not taking part in the trading transactions. Even so, it must be held that the business in saris that was carried on by the elder and major members of the family was joint family business and was carried on for all the defendants and Sidram. The loan must, therefore, be held to be made to traders.

3. Now, in connection with loan to traders, the relevant provisions are in Section 2 (9) of the Act and read as follows :

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

(a) x x x x x (b) x x x x x (c) x x x x x (d) x x x x x (e) x x x x x (f) x x x x x (g) except for the purposes of Sections 23 and 25 -

(i) a loan to a trader.

x x x x x'

On a reading of the above definition of loan in Section 2 (9), it is clear that the provisions of the Act, including those in Sections 18 and 19, are not applicable to loans advanced to traders. To loans advanced to traders, Sections 23 and 25 only apply. The learned appellate Judge below was not justified in his view that if loan was not shown to have been advanced to a trader for purposes of his trade, the same is not excluded from being loan under Section 2 (9). The learned Judge failed to appreciate that the provisions in clause (g) of Section 2 (9) have not the effect of providing that loans which were not advanced to traders for their trade purposes would be the loans within the meaning of the Act. On the contrary, the clear and unambiguous language in the above clause (g) has the effect of providing that whenever loan was advanced to a trader, except for the purposes of Sections 23 and 25, it could not be loan within the meaning of the Act, i.e., the defining Section 2 (9). The learned Judge should have, having regard to the clear evidence of the plaintiff on record, held in the plaintiff's favour that, since the above mortgage loan had been advanced to a joint family which was carrying on business in saris, it was covered by the provisions in the above clause (g) and was loan to traders. Merely for the reason that it was not stated in the evidence that the loan was advanced for purposes of the trade of the joint family the learned judge was not justified in holding that the loan was not made to traders. That two of the sons of Sidram were minors at the date of the mortgage and that his wife had joined in the mortgage was, in that connection, not sufficient to make a finding that the loan was not advanced to a trader. It is quite clear that the loan was advanced to the trading family and must be held to have been made to traders.

4. The power to refuse interest to a money - lender on breach of the provisions in Sections 18 and 19 of the Act is contained in Section 21 of the Act. Section 21 was not applicable to the facts of the suit mortgage having regard to the above provisions contained in clause (g) of Section 2 (9). The two Courts below were, therefore, not justified in depriving the plaintiff of the interest that had accrued due on the mortgage till the date of the institution of the suit.

5. The appeal is accordingly allowed and the decree passed by the trial Court and confirmed by the lower appellate Court is modified to include the interest due till the date of the institution of the suit, viz. Rs. 2,915/-. The preliminary decree will be drawn accordingly.

6. No order as to costs of this appeal.

7. Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com