

**Gaurishanker Vs. Magharam**

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**Court :** Rajasthan

**Decided On :** Feb-27-1974

**Reported in :** AIR1974Raj238

**Judge :** Sohan Nath Modi, J.

**Acts :** Rajasthan Moneylenders Act, 1964 - Sections 2(10); [Evidence Act, 1872](#) - Sections 101 to 104

**Appeal No. :** First Appeal No. 197 of 1972

**Appellant :** Gaurishanker

**Respondent :** Magharam

**Advocate for Pet/Ap. :** Bipinchandra, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Sohan Nath Modi, J.

1. This is a defendant's appeal arising out of a suit instituted by the plaintiff-respondent for recovery of a sum of Rs. 4,000/- as principal and Rupees 1,096/- as interest total Rs. 5,096/- on the basis of a khata dated 10-10-1967.

2. It was alleged that the defendant borrowed a sum of Rs. 4,000/- from the plaintiff on 10-10-67 and executed a khata (Ex. 1) in his own hand-writing in the bahi of the plaintiff and promised to repay the same with interest at the rate of fifteen annas per cent per month.

3. Defence was of total denial. The defendant denied the execution of the khata Ex. 1 as also receipt of the consideration. Further plea taken was that the suit was not maintainable as the plaintiff was not holding money-lending licence at the date he advanced the money. Various other pleas were also raised but no argument was advanced in respect of them.

4. The learned Additional District Judge held that the khata (Ex. 1) was genuine and it was executed by the defendant for consideration. He further held that the plaintiff was not a money-lender within the meaning of the Rajasthan Money-lenders Act, 1963 (Act No. 1 of 1964). hereinafter called as the Act, and it was not necessary for him to obtain money-lender's licence. He accordingly decreed the suit against the appellant for Rs. 4950 with pendente lite and future interest at the rate of four per cent per annum on the principal sum of Rs. 4,000/-. Aggrieved by the said judgment and decree, the defendant has come in appeal. The plaintiff-respondent has not put in appearance in spite of service.

5. Learned counsel for the defendant-appellant, in the first instance, contends that there is no reliable evidence to prove execution of the khata by the defendant. This contention is devoid of force, The plaintiff has

appeared in the witness-box as P. W. 2. He has deposed that on Asoj Badi 7, Smt. 2024 corresponding to 10-10-67 the defendant borrowed Rupees 4,000/- from him and executed the khata (Ex. 1) in his own handwriting. His testimony stands corroborated by P. W. 1 Dungarram. P. W. 3 Asharam, P. W. 4 Narsharam and P. W. 5 Kesraram, all of whom have deposed that the defendant executed the khata in their presence, Against this overwhelming evidence, there is bare denial of the defendant. No good reason has been pointed out to me by the learned counsel for the defendant for disbelieving the testimony of all these witnesses. I therefore, in entire agreement with the learned District Judge, hold that the khata (Ex. 1) is genuine and was executed for consideration by the defendant.

6. The next contention of the learned Counsel is that the plaintiff was a money-lender on the date he advanced the loan to the defendant and since he held no money-lender's licence, no decree could be passed in his favour under Section 11 of the Act. The question that arises for consideration is whether the plaintiff was a money-lender at the time he advanced the loan. The term 'moneylender' is defined in Clause (10) of Section 2 of the Act. It reads as under:--

'(10) 'Money-lender' means-

(i) an individual, or

(ii) an undivided Hindu family, or

(iii) a company other than a banking company as defined in Section 5 of the Banking Companies Act, 1949, 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.'

Again, the expression 'business of money-lending' is defined in Clause (2) of Section 2 of the Act. It runs as under:--

'(2) 'Business of money-lending' means the business of advancing loans, whether or not in connection with or in addition to any other business.'

It is contended by the defendant's learned counsel that the plaintiff in his statement admitted that he advanced loans to others and that evidence is sufficient to hold that he was a money-lender within the meaning of Clause (10) of Section 2 of the Act. The relevant portion of the plaintiff's statement on which reliance has been placed reads as under:--

euhysafMx ykblsUI esjk fy;k gqok ugh gS AFkksMk cgqr m/kkj nsrk gqa A esjs fy;s fdrus m/kkj py jgs gS ;kn ugha ekewyhpys gaS A

There is no other evidence on the point. The question arises whether it can be inferred from the above statement that the plaintiff engaged himself in the business of advancing loans. In my opinion, the answer must be in the negative. The mere fact that the money was advanced on interest on more than one occasion would not necessarily import that he was engaged in the business of advancing loans, nor does a man become money-lender merely because he may on one or several isolated occasions lend money to a stranger. The word 'business' imports the notion of system, repetition and continuity. In (1906) 1 KB 584, it was observed that speaking generally, a man who carries 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 (1896) AC 325 at page 343, Lord Morris is reported to

have 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 business or trade must be habitually or systematically exercised and that it cannot apply to isolated transactions.'

Similarly, it was held by a Full Bench of the Allahabad High Court in 17 All LJ 1147 = (AIR 1919 All 13 (2)) (FB) that 'an element of continuity and habit is essential to constitute the exercise of a profession or business.' In the present case, the statement of the plaintiff simply shows that he was a casual money-lender and not a professional money-lender who alone is contemplated under Clause (10) of Section 2 of the Act. In my opinion, the learned Additional District Judge was right in holding that the plaintiff was not a money-lender within the meaning of the Act.

7. It is next contended that the trial Court committed error in placing the burden of proof on the defendant to prove that the plaintiff had no money-lender's licence and he had no right to bring the suit. It is urged that it was for the plaintiff to prove the circumstances on which he claimed exemption from holding money-lender's licence. I find no substance in the above contention. The defendant accepted the onus of proof cast upon him and undertook to discharge the same. He, however, failed to discharge the burden placed on him. He cannot now be allowed in appeal to turn round and say that he was not fairly treated in the matter of burden of proof.

8. There is no force in this appeal and it is dismissed. Since the plaintiff-respondent has not contested the appeal, I leave the parties to bear their own costs in this appeal.

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