

MSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**

SUMMARY SUIT NO. 2223 OF 2001

M/s. SHREEJI INVESTMENTS )  
 having its registered office at )  
 102, Shreeji Chambers, 60, Ghogha  
 Street, Janmabhoomi Marg, Fort )  
 MUMBAI 400 001. ) .. PLAINTIFFS

VERSUS

VIRENDRA JAVERI )  
 Proprietor of M/s. Virendra )  
 Finance, 16/41, Makani Manor, )  
 Peddar Road, MUMBAI 400 026 ) .. DEFENDANT

Mr. A. V. Doijode for plaintiffs

Mr. Rushabh Shah i/b Raval Shah & Co. for Defendant

**CORAM: SMT. RANJANA DESAI, J.**

DATE ON WHICH THE JUDGMENT IS

RESERVED : 2ND NOVEMBER, 2007

DATE ON WHICH THE JUDGMENT IS

PRONOUNCED: 31st JANUARY, 2008

JUDGMENT:

. The plaintiffs have filed this suit against the defendant for a decree in the sum of Rs.11,62,500/- together with interest thereon at 21% per annum from the date of the filing of the suit till actual payment.

2. The case of the plaintiffs is that they carry on the business of investments and finance. They are not money lenders within the meaning of the provisions of the Money Lenders Act, 1946 ("the said Act" for short). According to the plaintiffs, the transaction between them and the defendant, who deals in jewelleries is not covered by the provisions of the said Act.

3. The plaintiffs contend that at the request of the defendant, the plaintiffs lent and advanced to the defendant a loan of Rs.10 lakhs by their cheque No. 447563 dated 1/2/2000 drawn on Citizen Co-operative Bank Ltd. Mumbai for a period of three months with interest @ 30% per annum payable in advance. The said cheque was credited to the account of the defendant on 2/2/2000. The defendant gave to the plaintiffs a cheque for Rs.75,000/- bearing No. 18309 drawn on United India Bank, Peddar Road Branch being the advance interest for three months i.e. February, March and April, 2000 and the same was duly realised by the plaintiffs.

4. According to the plaintiffs, the defendant

extended the loan for two more periods of three months each. The defendant gave two cheques, each in the sum of Rs.75,000/- one for the month of May, June, July and the other for the month of August, September and October, 2000. The said cheques were encashed by the plaintiffs. The defendant sought further extension of the loan for the period of three months i.e. from 1/11/2000 to 31/1/2001 and gave cheque No. 020685 dated 31/1/01 for Rs.75,000/- being the interest for the period 1/11/2000 to 31/1/2001. This cheque was dishonoured with the remark "Payment stopped by the drawee".

5. According to the plaintiffs, at the time of seeking extension of time for repayment of the loan for the period 1/11/2000 to 31/1/2001, the defendant had given to the plaintiffs four cheques of Rs.2,50,000/- each dated 1/11/2000 to repay the loan of Rs.10 lakhs, drawn on the United Bank of India Peddar Road Branch, Mumbai. All these four cheques were dishonoured when presented with the remark "payment stopped by the drawee".

6. Thus it is the case of the plaintiffs that the defendant owes to the plaintiffs a total amount of Rs.11,62,500/- as on 15/5/01 as per the statement

of claim annexed to the plaint at Exh.-K. The plaintiffs have, therefore, filed the present suit.

7. The defendant has contested the suit. It is inter alia the case of the defendant as stated in the written statement that the plaintiffs have suppressed material facts. According to the defendant Vijay Kishor Mohnani, the son of Kishor Mohnani, the partner of the plaintiffs, was misbehaving with the defendant by coming late at night to the defendant's house and abusing the defendant. Though the defendant requested Kishor Mohnani to ask his son to stop indulging in such acts, Kishor Mohnani did not do anything and, therefore, the defendant had to file a suit being Suit No. 20 of 2001 in the Bombay City Civil Court for restraining Vijay Mohnani, Kishor Mohnani and their agents, servants and associates from entering the building where the defendant resides. The City Civil Court granted an order of injunction as prayed for by the defendant.

8. Further case of the defendant is that the plaintiffs never advanced any amount to him as loan. The plaintiffs and the defendant had business dealings towards which the defendant had

issued certain blank cheques and writings in favour of Kishor Mohnani partner of the plaintiffs as security. The defendant had cleared all the accounts and dealings with the plaintiffs. The defendant had not paid any cheques in the sum of Rs.75,000/- towards interest to the plaintiffs. Except the signature on the said cheques the rest of the writings on the said cheques is not of the defendant and the said cheques are from those blank cheques which were issued by the defendant to the plaintiffs in business dealings. The defendant has denied that any extension was granted of any loan as alleged or otherwise. According to the defendant he had cleared all the accounts of Kishor Mohnani and certain cheques and documents issued as a security remained with the said Kishor Mohnani. The defendant apprehended that Kishor Mohnani would misuse the same and, therefore, he instructed his bankers to stop payment. The defendant has denied that he issued the cheques. The defendant has taken exception to the rate of interest stated in the statement of claim. It is pointed out that the plaintiffs are claiming interest @ 30% per annum without any writing or contract and in the prayer clause they have claimed interest @ 21% per annum. According to the defendant a totally false and

frivolous claim is made against the defendant. The defendant has denied the plaintiffs' case that the plaintiffs are not money lenders.

9. In the light of the pleadings of the parties, following issues are framed.

1. Do the plaintiffs prove that they advanced a loan of Rs. Ten lakhs to the defendants as alleged?

2. Do the plaintiffs prove that the defendants paid interest on the said loan by three cheques each of Rs.75,000/-, as alleged ?

3. Does the defendant prove that he had issued the cheque as security to clear the accounts, as alleged in para 3 of the written statement?

4. Whether the suit transaction is governed by provisions of the Bombay Money Lenders Act, 1946?

5. Are the plaintiffs entitled to

recovery of Rs.11,62,500/- with further interest of 21% on the principal amount of Rs.10,00,000/- from the date of the suit till realisation?

6. What order and decree?

10. In support of plaintiff's case Kishor Mohnani partner of the plaintiffs has filed his affidavit of examination-in-chief reiterating the contents of the plaint. He has also examined himself.

11. Before deciding the issues relating to the loan allegedly advanced by the plaintiffs to the defendant and the liability or otherwise of the defendant, it is necessary to consider the objection raised by the defendant's counsel to the maintainability of the suit. In the plaint, the plaintiffs have averred that they carry on business of investments and finance. The plaintiffs have stated that they are not money lenders within the meaning of the said Act. The plaintiffs have further averred that the transaction between the plaintiffs and the defendant of advancing loan is not covered by the said Act.

12. In the written statement the defendant has denied the plaintiffs' contention that they are not money lenders within the meaning of the said Act. On the basis of these pleadings Issue No. 4 is framed. It is, therefore, necessary to find out whether the suit transaction is covered by the said Act.

13. Learned Counsel for the defendant contended that the plaintiffs are engaged in the business of money lending. It is pointed out that in the cross-examination plaintiffs witness Kishor Mohnani has admitted that the plaintiffs are doing the business of finance and investment and they advance monies against security of promissory notes, post dated cheques as lenders and charge interest. Learned counsel for the defendant contended that it is clear from the evidence of Kishor Mohnani that the plaintiffs are in the business of money lending. There is continuity of money lending activities. The plaintiffs do not have licence to do money lending business and therefore, the present suit is not maintainable. In support of his submission learned counsel relied on Sitaram Shravan Koshti v. Bajya Parnya Bhoi, AIR 1941 NAGPUR, 177 and a judgment of this court in Nandram



Kaniram & Ors. v. N. B. Rahatekar, 1994 (1) B.C.R. 28.

14. As against this learned counsel for the plaintiffs contended that the plaintiffs carry on business of investment and finance. They are not money lenders within the meaning of the said Act. He submitted that suit transaction is based on Negotiable Instruments and hence it is not covered by the provisions of the said Act. In support of this submission learned counsel relied on judgment of this court in Sitaram Laxminarayan Rathi v. Sitaram Kashiram Koli & Ors., 1985 MLJ 430 and Bhanushankar Bhatt v. Kamal Tara Builders Pvt. Ltd. & Anr., AIR 1990 BOMBAY 140. He also relied on judgment of this court in Sohel Memon & Ors. v. State of Maharashtra 2006 (2) BCR (Cri.) 542 and an unreported judgment of this court dated 30/1/2006 in Shri Jaikrishna Patil v. Dilip Chowade & Anr. in Criminal Appeal No.396 of 1997.

15. In the plaint the plaintiffs have stated that they carry on business of investments and finance. It is stated by Kishor Mohnani in the cross-examination that the plaintiffs used to give cheques to the parties and receive payments by

cheques only and apart from cheques and promissory notes the plaintiffs never took any other documents from people. There is no indication in the evidence that the plaintiffs are repeatedly or continuously indulging in money lending transactions. The defendant has not confronted the plaintiffs with any such instances of money lending transactions. Section 2(10) defines money lenders. As per this definition a person or a firm who carries on business of money lending is a money lender. In Sitaram Koshti's case (supra) the Nagpur High Court was dealing with definition of money lender given in Usurious Loans Act. According to that definition a money lender is a person who in the regular course of business advanced a loan. The Nagpur High Court observed that the word regular shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of money lending is shown to the court it is impossible to state that that constitutes a regular course of business. It was further observed that an isolated act is an act of business, but not necessarily an act done in the regular course of business.

16. In the present case the defendant has failed to establish that the plaintiffs are continuously carrying on money lending activities. No instances are brought on record. Isolated act of giving loan to the defendant does not make the plaintiffs money lenders. Therefore, even if this case is examined in the light of the judgment of Nagpur High Court in Sitaram Koshti's case, it cannot be said that the plaintiffs are money lenders.

17. It is also pertinent to note that suit transaction is based on post-dated cheques. In Sitaram Rathis case (supra) the plaintiffs therein had paid amount to the defendant against three post dated cheques of Rs.500/- each. The cheques were dishonoured when presented. The plaintiff, therefore, filed suit for recovery of Rs.1500/-. One of the issues framed by the trial court was whether the plaintiff was a money lender and whether he had complied with the provisions of the said Act in order to entitle him to file a suit in connection with the suit transaction. The question which arose for consideration was whether post dated cheque can be said to be a cheque within the meaning of the Negotiable Instruments Act. This court observed that under Section 2(9)(f) of the

said Act, if the loan is advanced as against cheques that transaction is outside the purview of the concept of loan. This court held that a post-dated cheque is a negotiable instrument within the meaning of Section 6 of the Negotiable Instruments Act. It is, therefore, not a loan within the meaning of the definition under the said Act. This court held that consequently a transaction in respect of a post dated-cheque is not covered by the provisions of Section 2(9)(f) of the said Act. This proposition is reiterated by this court in Shri Jaikrishna Patil's case (supra) and in Sohel Memon's case (supra). Admittedly the suit transaction is based on post-dated cheques. Payment made against the said cheques is, therefore, not loan within the meaning of the said Act. It is, therefore, not possible to hold that the suit transaction is covered by the said Act and, therefore, the suit is not maintainable. In my opinion the suit is perfectly maintainable. Having answered issue No. 4, I shall now turn to the other issues.

18. In support of the plaintiffs' case that the plaintiffs paid Rs.10 lakhs by cheques to the defendant as loan on 1/2/2000, Kishor Mohnani has

produced the plaintiffs' banker's certificate i.e. Citizen Credit Co-operative Bank's Certificate dated 13/8/2001, certifying that a cheque of Rs.10,00,000/- drawn in favour of M/s. Virendra Finance of which the defendant is the sole proprietor was encashed by the defendant. The certificate shows that the said cheque was credited in the account of M/s. Virendra Finance Company Ltd. The said certificate is at Exh. P-10.

19. According to the plaintiffs the defendant issued cheque No. 15309 dated 2/2/2000 for Rs.75,000/- being three months' advance interest for the period February, March & April, 2000. The said cheque was encashed by the plaintiff. This is shown in the statement of accounts of the plaintiff issued by Citizen Co-operative Bank. It is at Exh.P-4.

20. The fact that the defendant requested for extension of further two more periods of three months each and paid Rs.75,000/- by cheque No.15361 dated 2/5/2000 for May, June and July 2000 and further amount of Rs.75,000/- by cheque No. 998612 dated 2/8/2000 as advance interest for August, September and October, 2000 and the said cheques

were encashed by the plaintiffs is also proved by Exh.P-5 i.e. the statement of account of the plaintiffs. The plaintiffs contend that this supports their case that the defendant paid interest at the rate of 30% per annum on Rs.10,00,000/- for the months February 2000 to October, 2000.

21. According to the plaintiffs the defendant further requested the plaintiffs for extension of three months and issued cheque No. 020685 dated 30/1/2001 for Rs.75000/- being the interest for the period 1/11/2000 to 31/1/2001. But the said cheque upon presentation was returned dishonoured with remarks "Payment stopped by the Drawer". A copy of the said cheque, Bank Memo and Advice are produced by the plaintiffs. They are at Exh.P7 (Colly.).

22. According to the plaintiffs in support of the loan which was advanced by the plaintiffs to the defendant, the defendant issued in favour of the plaintiffs four cheques dated 1/11/2000, drawn on United Bank of India, Peddar Road Branch in the sum Rs.25,000/-each. They bear Nos. 015310, 015311, 015312 and 015313. The said cheques when presented were dishonoured on 24/2/2001 with remarks "Payment

stopped by the Drawer". Exhibit P-8 (Colly.) are the dishonoured cheques and Exh. P-9 (Colly.) are the Bank's Memo and Advice. The plaintiffs, therefore, filed the instant suit.

23. In his affidavit, the defendant has come out with a case that he had issued blank cheques Ex.P-8 (colly) towards security. According to him he has repaid the amount. He has paid Rs.1,00,000 vide cheque dated 2/2/2000 bearing no 15308 drawn in favour of Kishor Mohnani. He has paid Rs.75,000/-by cheque No. 15309 dated 2/2/2000 drawn in favour of Shreeji Investment and Rs.5,00,000/- vide cheque dated 2/2/2000 bearing No. 18467 drawn in favour of Kishor Mohnani. In this connection the defendant has produced copies of his statement of bank account certified by United Bank of India. It is at Exh."D-8 Colly.".

24. According to the defendant the balance amount was Rs.3,25,000/-. It was agreed between the plaintiffs and the defendant that upon the defendant paying the balance amount, the plaintiffs will return the blank cheques. Further case of the defendant is that he has paid further amount of Rs.75,000/- by cheque drawn in favour of Shreeji

Investment dated 3/5/2000 and further amount of Rs.75,000/- by cheque dated 2/8/2000 drawn in favour of Shreeji Investment. In this connection the defendant has produced relevant bank statement which is at Exh. D-8 Colly. Thus balance of Rs.1,75,000/- remained to be paid.

25. According to the defendant thereafter he issued a blank cheque No. 20085 drawn on United Bank of India, Peddar Road Branch, duly signed by him. It was agreed that, if the balance amount is settled before January, the said cheque will be returned by the plaintiffs to the defendant. The defendant has, further stated that on 11/10/2000 Rs.75,000/- was withdrawn in cash by cheque No. 20653 drawn on the United Bank of India and on that day itself that cash was paid to the plaintiffs. According to the defendant again on 23/10/2000 Rs.1,00,000/- was withdrawn by cheque No. 20665 drawn on the United Bank of India and on that day cash was paid to the plaintiffs. As regards withdrawal of this amount, the relevant bank statement is produced. It is at Exh.D-8 Colly. Thus according to the defendant balance amount of Rs.1,75,000/- has been paid by him to the plaintiffs and nothing is due and payable by him to



the plaintiffs. What is suggested is that the plaintiffs have not returned the blank cheques. They have misused them.

26. It is necessary to test this case of the defendant.

27. To me, the case of the defendant appears to be false. According to the plaintiffs, Rs.6 lacs were paid by the defendant towards repayment of loan of Rs.6 lacs advanced by Kishor Mohnani personally to the defendant. In the cross-examination, the defendant has admitted that Kishor Mohnani had given him a cheque of Rs.5 lacs on 2/2/1999 and the amount was credited in his account in the United Bank of India (certificate to that effect issued by Jankalyan Sahakari Bank Ltd. is on record.) When the defendant was pointedly asked why he had taken Rs.5 lacs from Kishor Mohnani on 2/2/1999 he has given an evasive answer that he did not remember why he had taken Rs.5 lacs from Kishor Mohnani. His case that Rs.5 lacs paid to Kishor Mohnani vide cheque dated 2/2/2000 bearing No.18467 was towards the loan of Rs.10 lacs is not substantiated by any writing. The defendant has admitted in his evidence that there was no writing given by him to

appropriate the amount of Rs.5 lacs towards Rs.10 lacs. He has also admitted that he does not have any receipt towards the alleged cash payment of Rs.1,75,000/- and Rs.1,50,000 made by him to the plaintiffs. It is pertinent to note that stand taken by the defendant in the court that his dealings with the plaintiffs were only paper entry transactions is not borne out by the pleadings. The mode of alleged repayment of Rs.10 lacs set out by him in his affidavit of evidence is not mentioned by him in the written statement and he has admitted this fact in the evidence. The defendant denied in the written statement that any loan was paid to him, but in the evidence he has stated that he has repaid Rs.10,00,000/-. He has accepted that the plaintiffs paid him Rs.10,00,000/-.

28. That there were earlier transactions between Kishor Mohnani in his personal capacity with the defendant and those transactions are totally different from the suit transactions is borne out by the bank entries which are on record. Kishor Mohnani has produced certified bank statements which are Ex-P12, Ex-P13 and Ex-P14. Ex-P12 establishes that Rs.1 lac were paid by Kishor

Mohnani to Virendra Zaveri on 2/12/1998. Ex-P13 establishes that Rs.2,000/- were received by Kishor Mohnani on 12/1/1999 from the defendant. Ex-P14 shows that Rs.1 lac were received by Kishor Mohnani on 6/2/1999 in his personal account. Ex-P14 also shows that Rs.10,000/- was received by Kishor Mohnani on 20/4/1999 from the defendant.

29. Against the backdrop of the categorical statement made by the defendant that he had taken Rs.5 lacs from Kishor Mohnani, the defendant's case that three cheques each in the sum of Rs.75,000/- as reflected in Ex-P4, Ex-P5, Ex-P6 were not towards advance interest, but towards repayment of Rs.10 lacs, that the two cheques dated 2/2/2000 in the sum of Rs.1 lac and Rs.5 lacs were issued by him towards repayment of Rs.10 lacs and that the remaining amount of Rs.3,75,000/- was paid by him to the plaintiffs in cash by two instalments one of Rs.1,50,000/- and the other of Rs.1,75,000/- is obviously a false story. The plaintiffs partner Kishor Mohnani has been cross-examined at length, but no dent is made by the defendant in the plaintiff's case.

30. The proceedings adopted by Kishor Mohnani

against the defendant have no relevance to the points involved in this suit. That circumstance therefore need not be discussed.

31. In the light of the above discussion. I answer Issue Nos. 1 and 2 in the affirmative and Issue No. 3 in the negative.

32. That takes me to the last issue as to whether the plaintiffs are entitled to recovery of Rs.11,62,500/- with future interest of 21% on the principal amount of Rs.1,00,000/- from the date of the suit till realisation. Undoubtedly Rs.10,00,000/-which were lent by the plaintiffs to the defendant have not been repaid by the defendant. Though there is no written document to prove that rate of interest was 30% per annum, it appears that the cheques of Rs.75,000/- were paid by the defendant to the plaintiffs towards interest were for the interest for the period February, March and April, 2000 for May, June, July, 2000 and for August, September, October 2000. These cheques were encashed. Therefore, upto October, 2000 the plaintiffs have received the interest and by the amount of interest paid the rate appears to be 30% per annum.

33. Further cheque of Rs.75,000/- as advance interest for 1/11/2000 to 31/1/2001 was dishonoured. The plaintiffs have, therefore, claimed Rs.10 lacs as the principal loan amount and Rs.75,000/- as the value of dishonoured cheque for the period 1/11/2000 to 31/1/2001. In my opinion, this claim of the plaintiffs is proved and justified. The plaintiffs have further claimed interest at 30% per annum on Rs.10,00,000/- from 1/2/2001 to 15/5/2001 i.e. up to the time when suit was filed. In my opinion, though it does appear that the defendant paid interest at the rate of 30% in the absence of any writing indicating agreed rate of interest granting interest at such high rate would be unjust. In my opinion, the plaintiffs are entitled to interest at the rate of 18% per annum on Rs.10,00,000/- from 1/2/2001 to 15/5/2001. The plaintiffs would also be entitled to interest at the rate of 9% on the sum of Rs.10,00,000/- from the date of decree till payment and costs of the suit.

34. Hence the suit is decreed to the following extent:

. The defendant shall pay to the plaintiffs a sum of Rs.10,75,000/-. The defendants shall also pay interest at the rate of 18% per annum on the sum of Rs.10,00,000/- for the period 1/2/2001 to 15/5/2001 and interest at the rate of 9% per annum on Rs.10,00,000/- from the date of the decree till payment. The defendant shall also pay to plaintiffs the costs of the suit.

35. The suit is disposed of.

JUDGE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 2223 OF 2001

DATE ON WHICH THE JUDGMENT IS

RESERVED : 2ND NOVEMBER, 2007

DATE ON WHICH THE JUDGMENT IS

PRONOUNCED:\_\_\_\_ST JANUARY, 2008

Transcription of  
Judgment / Order.

Submitted for  
approval.

**THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:**

**THE HON'BLE SHRI JUSTICE :**

1. Whether Reporters of Local Papers )  
be allowed to see the Judgment? )
2. To be referred to the Reporters or )  
not? )
3. Whether Their Lordships wish to )  
see the fair copy of the Judgment? )
4. Whether this case involves a )  
substantial question of law as to )  
the interpretation of the )  
Constitution of India, 1950 or any )  
Order made thereunder? )
5. Whether it is to be circulated to )  
the Civil Judges? )
6. Whether the case involves an impor- )  
tant question of law and whether )  
a copy of the judgment should be )  
sent to Nagpur, Aurangabad and Goa )  
Offices? )