

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO. 75 OF 2015
IN
WRIT PETITION NO. 5303 OF 2015
WITH
CIVIL APPLICATION NO.151 OF 2015 IN RPW/75/2015**

Mr. Kishor Jayantilal Janani

Petitioner

Vs

M/s. Arun Fintrade Limited

.. Respondent

Mr. Surin Usgaonkar a/w Ashok Goel and Ritesh Jain, Advocate for
Petitioner.

Mr.R.K.Desai, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 31/07/2015

PC:

1. Heard Mr. Surin Usgaonkar, learned counsel for the petitioner and Mr. R.K.Desai, learned counsel for the respondent at length.

2. By this Petition under Section 114 read with Order XLVII, Rule 1 of the C.P.C., the petitioner has sought review of the order dated 23.6.2015 passed by this Court in writ Petition No. 5303 of 2015. By that order, the petition instituted by the petitioner, hereinafter referred to as 'defendant no.2', challenging the Judgment and order dated 7.3.2015 passed by the learned Judge, City Civil Court Bombay in Notice of Motion No.552 of 2015 in Summary Suit No.8011 of 1996 was dismissed.

3. In support of this petition, Mr. Usgaonkar submitted that in paragraph 9, this Court referred to the decision in the case of Sitaram Shrawan Kosti Vs. Bajya parnya Bhoi, AIR 1941 Nagpur 171. The said decision arose from Madhya Pradesh Money-Lenders Act, 1934 (for short, 'M. P. Act'). Section 2(v) defines expression 'money-lender". He submitted that money-lender means a person who, in the **regular course of business**, advances a 'loan' as defined in that Act. As against this, the Bombay Money-Lenders Act, 1946 (for short, 'Bombay Act") does not include the word 'regular' in the definition of money-lender. The expression 'money-lending' is defined under section 2(2) of the Bombay Act. The expression "money lender" is defined under section 2(10) of the Bombay Act. Comparison of Section 2(v) of the M.P.Act with Section 2(10) of the Bombay Act shows that the provisions are materially different. Whereas under section 2(v) of the M.P.Act, a person, in regular course of business, advances loan is a money lender, under the Bombay Act the words "in the regular course of business" are not included. He submitted that through oversight, this Court relying upon the decision in the case of Sitaram Koshti (supra) has held in paragraph 8 that it is necessary for the defendant to establish that the plaintiff is in the habit of advancing loan to persons as a matter of regular business and whether the plaintiff was/is in the habit of advancing loan to persons as a matter of regular business is a

matter of evidence. The said finding is erroneous and there is error on the face of record in applying the decision of Sitaram Koshti. In short, he submitted that the provisions of the M.P. Act and the provisions of the Bombay Act are materially different.

4. On the other hand, Mr Desai supported the impugned order. He submitted that the Court while deciding the petition also considered the definition of expression 'loan' in section 2(9) of the Bombay Act as also relied upon the decision of this Court in the case of M/s Marine Container Services (India) Pvt Ltd, 1999 (3) Bom C.R. 760. He submitted that no case is made out for reviewing the order.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Section 2(v) of the M.P Act defines the expression 'money lender' which reads as under.

“2. In this Act, unless there is anything repugnant in the subject or context -

(v) “money-lender” means a person who, **in the regular course of business**, advances a loan as defined in this Act and shall include, subject to the provisions of section 3, the legal representatives and the successors in interest whether by inheritance, assignment or otherwise of the person who advanced the loan and money-lending shall be construed accordingly.”

6. Apart from that, Section 2(10) of the Bombay Act defines expression 'Money lender' and reads thus:

“2. In this Act, unless there is anything repugnant in the subject or context, -

(10) “money-lender” means—

- (i) an individual, or
- (ii) an undivided Hindu family; or
- (iii)
- (iiia) a company, 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;
 and includes a pawn-broker but does not include,—
 - (i) Government,
 - (ii) a local authority,
 - (iii) a bank,
 - (iv) the Agricultural Refinance corporation constituted under the Agricultural Refinance Corporation Act 1963; or
 - (v) any other banking, financial or any institution which the State Government may, by notification in the Official Gazette, specify in this behalf;”

The definition of 'loan' in section 2(9) clause (f2) of the Bombay Act reads as under:

“2. In this Act, unless there is anything repugnant in the subject or context -

(9) "loan" means an advance at interest whether of money or in kind but does not include-

(f-2) an advance made bona fide by any person carrying on any business, not having for its primary object the lending of money if such advance is made **in the regular course of his business.**”

(emphasis supplied)

7. Perusal of the definition of the expression “loan”, extracted herein above, shows that loan does not include an advance made bonafide by any person carrying on any business, not having for its primary object the lending of money if such advance is made in the regular course of his business.

8. While dismissing the petition, the decision in the case of M/s Marine Container Services (India) Pvt Ltd, was also considered. In that case, the learned Single Judge of this Court observed thus:

"My attention was also invited to judgments of this Court. In the case of Sitaram Laxminarayan Rathi v. Sitaram Kashiram Koli and others, 1984(2) Bom.C.R. 81 : 1985 Mh.L.J. 430 the issue was, whether the provisions of the Act would apply in respect of a postdated cheque. A learned Single Judge held, that the loan was admittedly against post dated cheques and as per the provisions of section 2(9)(f) of the Money-Lenders Act any payment made as an advance against cheques was excluded under the provisions of the Money Lenders Act. The next judgment relied on was in the case of [Nandram Kaniram and others v. N.B. Rahatekar](#), . The following observations of the learned Single Judge are relevant :--

"Money-lending business always imports a notion of system, repetition and continuity. These elements have been held to be absent in the instant case and I see no perversity in reaching that conclusion."

In that case the matter was in second appeal before the learned Single Judge. There were concurrent findings of fact. The learned Judge held, that for a transaction to be a money lending business it must import a notion of system, repetition and continuity. My attention was also invited to a judgment of the Apex Court in the case of [Gajanan and others v. Seth Brindaban](#) 1971 1 SCR 657. The Apex Court considered as to when a person could be considered to be a money lender. The Apex Court observed as under :--

"There is a long catena of authorities on the statutes regulating and controlling money lenders in which the expression "money lender" has been so construed as to exclude isolated transaction or transactions of money lending. Vivian Bose, J., while dealing with the Act which concerns us, in Sitaram Shrawan v. Bajya Parnya, A.I.R. 1941 Nag. 177 said:

"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 constitutes a regular course of business. It is an act of business but not necessarily an act done in the regular course of business."

9. Perusal of the above extracted portion shows that the learned Single Judge considered the decisions in the case of (1) Sitaram Laxminarayan Rathi v. Sitaram Kashiram Koli, 1984(2) Bom.C.R. 819 and (ii) [Nandram Kaniram v. N.B. Rahatekar, 1994 \(1\) Bom C.R. 28](#), wherein the learned Single Judge observed that Money-lending business always imports a notion of system, repetition and continuity. [The learned Single Judge thereafter considered the decision of the Apex Court in the case of Gajanan and others v. Seth Brindaban](#), (1971) 1 SCR 657, wherein it is observed that there is a long catena of authorities on the statutes regulating and controlling money lenders in which the expression "money lender" has been so construed as to exclude isolated transaction or transactions of money lending.

10. Perusal of the order under review shows that after considering the decision of this Court in the case of Marine Container Services (India) Pvt Ltd, as also after considering the definition of expression "loan" in Section 2(9)(f2), the finding was recorded in paragraph 8 that it is necessary for the defendant to establish that the plaintiff is in the habit of advancing loan to persons as a matter of regular business. Whether the plaintiff was/is in the habit of advancing loan to persons as a matter of

regular business is a matter of evidence. In view thereof, I do not find any merit in his review petition.

11. In the case of **Kamlesh Verma Vs. Mayawati**, AIR 2013 Supreme Court 3301, the Apex Court while considering scope of review has observed thus :

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. “

12. Applying the tests laid down by the Apex Court in the case of Kamlesh Verma (supra), I do not find that any ground is made out for seeking review of the order. Hence, Review Petition fails and the same is dismissed. In view of dismissal of Review Petition, Civil Application No.151 of 2015 does not survive and the same is disposed of.

(R.G.KETKAR, J.)