In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

CS-COM/354/2024
[Old Case No.CS/41/2022]
IA NO: GA/1/2022, GA-COM/7/2024,
GA-COM/11/2025

DIVIJ MERCANTILES PRIVATE IMITED
VS
ASHOKA HAWAI AND SHOES PVT LTD

For the plaintiff : Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Hemant Tiwari, Adv.
Mr. Shantanu Mishra, Adv.

For the defendant : Mr. V.V.V. Sastry. Adv.
Ms. Khushi Gupta, Adv.

Heard on : September 7, 2026

Judgment on : September 7, 2026
[In Court]

ANIRUDDHA ROY, J :

FACTS:

1. This is an application filed by the defendant praying for rejection of plaint on two fold grounds:

   (i) The suit is not a commercial suit within the meaning of **Sub-section (c) to Section 2** read with **Sub-section (f) to Section 2 of the Commercial Courts Act, 2015** (hereinafter**, CC Act**.) and

   (ii) The suit is barred under the provision of the **Bengal Money-Lenders Act, 1940** (hereinafter**, BML Act**).

2. It is noted that beyond **120 days** of service of writ of summons, the defendant has filed the written statement on the basis of concession given by the plaintiff. However, subsequently the plaintiff has filed an application being **IA NO.GA-COM/7/2024** praying that the written statement filed by the defendant be taken off the file. Such application is pending.

3. The defendant has applied for rejection of plaint.

SUBMISSIONS:

4. Mr. V.V.V. Sastry, learned advocate appearing for the defendant has referred to the plaint and submits that the basis and foundation of the plaint is that the plaintiff allegedly has advanced a sum of Rs. 65,000,00/- to the defendant. The

defendant has failed and neglected to return the money. Plaintiff has served legal notice. Then the plaintiff has filed the instant suit claiming principal along with interest.

5. Mr. Sastry has drawn attention of this Court to the statements of the plaintiff at **page 27** of the application with regard to the documents relied upon by the plaintiff and the copies of the document annexed to the plaint and submits that the plaintiff has not whispered of any mercantile document or any written agreement in support of the transaction. Nowhere in the plaint any averment has been made to bring the plaint within the four corner of the definition of ***commercial disputes*** within the meaning of the said CC Act. Hence, the instant suit is not a commercial suit and the plaint filed should be rejected. In support, Mr. Sastry has referred to the following judgments:

(i) In the matter of: Prime Hitech Textiles LLP versus Manish Kumar, reported at 2022 SCC OnLine Cal 2326 and

(ii) ***In the matter of: Meena Vohra vs. Master Hosts Pvt. Ltd. and Others, reported at 2025 SCC OnLine Del 1758.***

6. On the second issue raised by Mr. Sastry, the plea taken under **BML Act**, he submits that in absence of any declaration being made in the plaint by way of averments or by disclosing

document that the plaintiff carries on business as a money lender having a valid certificate under BML Act, the cause of action pleaded in the plaint is also barred by law under the provision of BML Act and the plaint should be rejected. In support, Mr. Sastry submits that the Hon'ble Supreme Court had considered the issue under BML Act and passed orders dated **July 23, 2024** at **page 4** to the supplementary affidavit, **February 16, 2026** and at **page 11** to the supplementary affidavit and **April 6, 2026** at **page 13** to the supplementary affidavit ***In the matter of: Raj Kumar Santoshi versus Prashant Malik, rendered in SLP (Crl.) No. 5485 of 2024.*** He submits irrespective of the matter where the issue has been raised that the lenders do not have requisite certificate under the BML Act, the Court should ensure that the proceedings instituted by such money lender are nipped in the bud.

7. Mr. Shantanu Mishra, learned advocate led by Mr. Jishnu Chowdhury, learned senior advocate appearing for the plaintiff submits that the definition under **Sub-section (c) to Section 2 of CC Act** is exhaustive in its nature and not restricted to any written contract only. The provision is illustrative and not a narrow one. There is no specified category of document mentioned under the Act which can only be defined as mercantile document. **Sub-section (f) to Section 2 of CC Act** is

also exhaustive and illustrative. The documents referred to in the plaint and the transaction based thereupon, as pleaded in the instant plaint, are required to be ascertained first whether those documents are in the nature of mercantile document or not. Once the requirements of such ascertainment comes, it becomes a triable issue calling upon a detail fact finding enquiry and in such situation, plaint cannot be rejected summarily. In support, he has relied upon the following decisions:-

(i) ***In the matter of: STRONG TOWERS PRIVATE LIMITED versus KARNANI CONSTRUCTIONS AND OTHERS, reported at 2025 SCC OnLine Cal 7853;***

(ii) ***In the matter of: ADM Agro Industries Kota & Akola Pvt. Ltd. versus Aone Agro Products Pvt. Ltd. and another, rendered in FMAT 259 of 2024 IA NO: CAN 2 of 2024 dated January 21, 2025 passed by Hon'ble High Court, Calcutta and***

(iii) ***In the matter of: DIVIJ MERCANTILES PVT LTD versus SMT. SABITA RUNGTA AND ORS, rendered in APOT 52 of 2025 with CS-COM/536/2024 dated April 27, 2026 passed by Hon'ble High Court, Calcutta;***

8. Referring to **Section 13 of BML Act**, Mr. Mishra, learned advocate appearing for the plaintiff submits that there is no

absolute bar, at the threshold, to maintain the present plaint on the basis of the averments made therein. **Sub-section (3) to Section 13 of BML Act** provides, if the money lender fails to pay penalty within the time fixed under **Sub-section (2)** or within such further time as the Court may allow, the Court may dismiss the suit. This specifically shows that the Court has the authority to allow the money lender to cure the defect, if any, by exercising its discretion before rejecting the plaint and if the money lender cures the defect by paying the penalty, as provided under the statute, the Court is not empowered to dismiss the suit on the ground of absence of requisite licence under BML ACT. In support, he has relied upon a decision ***In the matter of: Dutta Vinimay Private Limited versus Dinesh Singh, reported at 2026 SCC OnLine Cal 4625.***

9. In the light of the above submissions, the plaintiff submits that this is not a fit case, where the plaint should be rejected.

DECISION:

10. After hearing the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court from a meaningful reading of the plaint that the plaintiff has instituted the suit with the case that the plaintiff has lent and advanced money to the defendant and the defendant has failed

and neglected to return it. The relevant averments from the plaint are quoted below:

> *"**1**. The plaintiff is a company within the meaning of the Companies Act 2013, having its registered office at 'Tobacco House', Room No.305(S), 3rd Floor, 1, Old Court House Corner, Kolkata – 700001, within in the jurisdiction aforesaid. The plaintiff is engaged, inter alia, in the business of financial intermediation and financial activities.*
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> *****
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> ***3.*** *The defendant was in need of funds and approached the plaintiff on or about January 2020. Pursuant to discussions held, inter alia, at the office of the plaintiff situated within the jurisdiction aforesaid, the plaintiff agreed to advance funds to the defendant which will be repayable at 12 % interest per annum. The parties agreed that the interest would continue to be paid by the defendant without fail every month and in the event, there was default in payment of interest in any month, the plaintiff would be entitled to recall the loan at such time as it deemed fit.*
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> ***4.*** *The plaintiff advanced a sum of Rs.65,00,000/- (Rupees sixty-five lakhs) to the defendant by way of bank transfer*

from the plaintiff's bank account maintained with HDFC Bank, Stephen House Branch, within the jurisdiction aforesaid, between 18th January 2020 and 18th September 2020. The sums have been received by the defendant. The said sums were repayable with interest at 12% per annum. A copy of the ledger maintained by the plaintiff is annexed hereto and marked as Annexure "B". A copy of the bank statement of the plaintiff's bank account maintained with HDFC Bank, Stephen House Branch, for the period January 2020 to March 2021 is annexed hereto and marked as Annexure "C".

5. *In respect thereof, the defendant has made part-payment of a sum of Rs.1,37,650/- (Rupees one lakh, thirty-seven thousand, six hundred and fifty), on 10th October 2020 on account of repayment of interest as evident from the bank statement annexed hereto as Annexure "C".*

6. *In addition thereto, the defendant has from time to time, and until 2nd August 2021, the defendant has paid TDS of a sum of Rs.39,437/- (Rupees thirty-nine thousand, four hundred and thirty seven) for the Financial Year 2020-2021 and Rs.3,600/- (Rupees three thousand and six hundred) for the Financial Year 2019-2020 in respect of the interest repayable to the plaintiff. In this regard, a* *copy of the Form 26AS of the plaintiff maintained with the Income Tax Department, Government of India, is annexed hereto and marked as Annexure "D".*

7. *From the above, it is clear that the principal sum received by the defendant is admitted and the interest payable thereon is also admitted. However, although the defendant has paid/deposited the TDS amount against the interest payable with the government, the defendant has failed and/or neglected to pay the interest against the same to the plaintiff, save and except a sum of Rs.1,37,650/- (Rupees one lakh, thirty-seven thousand, six hundred and fifty) to the plaintiff, as detailed in paragraph 5 above."*

11. On reading of the definition of ***commercial dispute*** as defined under **Sub-section (c) to Section 2 of CC Act**, it appears to this Court that there is no mention of any written contract. However, the expression is there ***mercantile documents*** with regard to the transaction specified thereunder. The definition of ***document*** as defined under **Sub-section (f) to Section 2 of CC Act** speaks of documents of several kinds.

12. On a conjoint and harmonious reading of these two provisions of CC Act in the light of the averments made in the plaint, this Court finds that the financial transaction between the parties, as

pleaded in the plaint on the basis of the available documents disclosed and mentioned in the plaint, the nature of transaction between the parties is required to be ascertained first. From the case made out in the plaint, it cannot be summarily said that the transaction between the parties, *ex facie*, is not a commercial transaction or that the dispute stated in the plaint, *ex facie*, is not a commercial dispute within the meaning of CC Act, unless a proper trial takes place on the issue.

13. The provisions laid down under **Rule 11 to Order VII of CPC** is not a mandate on the Court. The provision only mandates on a meaningful reading of the plaint, if the plaint, *ex facie,* is found to be, *inter alia*, barred by any law, the plaint shall be rejected, at the threshold. However, if on a meaningful reading of the plaint, the Court finds an arguable case is there to ascertain the nature and character of the plaint case by holding a fact finding enquiry, then such a plaint cannot be rejected, at the threshold in a summary manner and the plaint must stand for trial. Plaintiff cannot be non-suited, at the threshold, in a summary manner so loosely and hastily if an arguable and a triable case is pleaded in the plaint.

14. Insofar as, the issue raised under the **BML Act**, as narrated above, after reading the provisions laid down under **Section 13 of BML Act**, this Court has already rendered its view ***In the***

matter of: Dutta Vinimay Private Limited (Supra) that since a curing provision is there under the statute, the money-lender/plaintiff should be granted an opportunity before rejecting the plaint.

15. The order of the Hon'ble Supreme Court referred on behalf of the defendant ***In the matter of: Raj Kumar Santoshi (Supra)*** was not under a situation where the maintainability of a civil suit was under challenge and a plaint was demanded for rejection. The order was passed in connection with a criminal proceeding.

16. ***In the matter of: Prime Hitech Textiles LLP (supra)***, a co-ordinate Bench has returned the plaint since it had found an unimpeachable case for rejection of plaint that the transaction stated in the plaint was not of commercial in nature. In the instant case, from reading of the statements made in the plaint, this Court finds to determine the issues raised by the defendant, the same requires a properly constituted trial of the suit and hence the instant plaint cannot be rejected at the threshold. Thus, the ratio in the said judgment would not apply in the facts of the instant case.

17. ***In the matter of: Meena Vohra (supra)***, a co-ordinate Bench of Delhi High Court found an unimpeachable case that the disputes in the subject suit therein did not qualify as a commercial dispute. In the instant case, from reading of the

statements made in the plaint, this Court finds to determine the issues raised by the defendant, the same requires a properly constituted trial of the suit and hence the instant plaint cannot be rejected at the threshold. Thus, the ratio in the said judgment would not apply in the facts of the instant case.

18. In view of the foregoing reasons and discussions, this Court is of the considered and firm view that the instant **plaint shall stand for trial** where the defendant shall be at liberty to take all points of maintainability of the suit along with other issues and the issue regarding maintainability, if raised, shall also be tried during the trial of the suit along with other issues.

19. It is made clear that, this Court has not gone into the merits of the issues raised by the defendant and the defendant shall be at liberty to raise the issues as the point of maintainability during the trial.

20. It is noted that, the defendant shall also be entitled to raise its issue with regard to the provisions under BML Act at the time of trial and this Court has not expressed any opinion on the same, at this stage.

21. It is also made clear that, this Court has not expressed any opinion on filing of the written statement by the defendant and the application pending in connection therewith filed by the

plaintiff. The application shall be decided in accordance with law.

22. Resultantly, the instant application **IA No.GA-COM/11/2025** stands **dismissed**, without any order as to costs.

23. The other two applications shall appear under the appropriate heading in due course.

(ANIRUDDHA ROY, J.)

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