

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA NO. GA-COM/4/2025
In CS-COM/76/2025

DUTTA VINIMAY PRIVATE LIMITED
Vs
DINESH SINGH

For the Plaintiff : *Mr. Varun Kothari, Adv.*
Ms. Sayani Das, Adv.
Ms. Sreetama Biswas, Adv.
Mr. Arya Bhattacharyya, Adv.

For the Defendant : *Mr. Shiv Shankar Banerjee, Adv.*
Mr. Jitesh Sah, Adv.
Ms. Aishwarya Gopalakrishnan, Adv.
Mr. Siddharth Chamaria, Adv.

Heard on : **April 28, 2026**

Judgment on : **April 28, 2026**

[In Court]

ANIRUDDHA ROY, J :

FACTS :

1. The plaintiff claims to have lent and advanced money to the defendant by virtue of several agreements. The plaintiff case is that while lending money, the defendant tendered post-dated cheques by way of security to secure the money lent and advanced by the plaintiff. **Three** separate agreements are there, as the plaintiff case

runs, executed by and between the parties under which the defendant has received and accepted money lent and advanced by the plaintiff.

2. The further plaint case is that the defendant has defaulted in paying back the money lent and advanced by the plaintiff, which led the plaintiff to file the instant suit.
3. The particulars of claim is mentioned in paragraph **48** to the plaint and the reliefs show the plaintiff has claimed decree for a sum of **Rs.3,44,95,551/-** and then interest thereupon.
4. This is a commercial suit. The defendant has filed its written statement.
5. The defendant has filed **three** applications. The first one claiming vacating of an interim order. Second one is for **rejection of plaint** being the **instant application**. Third one, praying for stay of suit.
6. The instant application being **IA No. GA-COM/4/2025** praying for **rejection of plaint** has been taken up for consideration first.
7. Affidavits are exchanged.

SUBMISSIONS:

8. Mr. Shiv Shankar Banerjee, learned advocate appearing for the defendant in support of his application for rejection of plaint has taken the plea that from a plain reading of the plaint, it appears that the plaintiff has allegedly lent and advanced money to the defendant arising out of a commercial transaction. When the plaintiff carries on a business of money lending, the plaintiff must have the requisite

licence under the provisions of **Bengal Money Lenders Act, 1940** (hereinafter, **BML Act**), which the plaintiff does not have.

9. Learned advocate, Mr. Shiv Shankar Banerjee submits that neither in the plaint nor in any disclosure thereto, has the plaintiff disclosed the requisite licence under the **BML Act**. He submits that when this specific issue has been raised through the instant application, claiming rejection of plaint, there also though the plaintiff has filed its affidavit in opposition but has not come up with a case to show that it has the requisite licence under the **BML Act**.
10. Referring to the definition from the **BML Act**, Mr. Banerjee submits that the transaction pleaded in the plaint coupled with the three agreements pleaded therein, would squarely show that the plaintiff is a money lender by business within the meaning of the **BML Act**. He then refers to the provisions laid down under **Sections 13 and 27** of the **BML Act** and submits that when the plaintiff does not have and has not produced the requisite licence, instant suit is not maintainable and the plaint should be liable to be rejected forthwith. He further submits that this Court should not proceed with the suit any further and stay it immediately.
11. Referring to the provisions laid down under **Order VII Rule 11** of **Code of Civil Procedure, 1908** (hereinafter, **CPC**), Mr. Banerjee, learned advocate submits that on reading of the statements made in the plaint, the plea taken by the defendant should be adjudged. At this stage, the plea taken by the defendant in the written statement and the application for rejection of plaint on the merits, would be

irrelevant and cannot be taken into consideration. He submits that the test for exercising the power under Order VII Rule 11 of CPC is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test has been laid down by the Hon'ble Supreme Court time and again in various judgments. The power under Order VII Rule 11 of CPC may be exercised by the Court at any stage of the suit. He further submits that the provisions of Order VII Rule 11 of CPC is mandatory in nature. It states that the plaint "**shall be rejected**" if any of the grounds specified in clauses (a) to (e) are made out. If the Court finds that the plaint does not disclose any cause of action or that the plaint is barred by any law or that the plaint clearly shows there is no right to sue exist in favour of the plaintiff, the Court has no option but to reject the plaint. In support, he has relied upon a decision of this Hon'ble Court ***In the Matter of: Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra), reported at (2020) 7 SCC 366.***

12. To demonstrate that in absence of money lending licence under the **BML Act**, the suit should be dismissed and should not be proceeded with and/or stayed, Mr. Banerjee has relied upon the following judgments:

(i) ***In the Matter of: Swaika Vanaspati Products Ltd. vs. Canbank Financial Services Ltd., reported at 2000 SCC OnLine Cal 234 = (2000) 2 Cal LJ 185 and***

(ii) ***In the Matter of: Urmila Kumari Bothra vs. Mr. Ashok Chaudhury, a judgment of a co-ordinate Bench dated November 27, 2024, rendered in GA/1/2021, CS/163/2020.***

13. In the light of the above submissions, learned advocate Mr. Banerjee appearing for the defendant prays for rejection of plaint.
14. Mr. Varun Kothari, learned advocate appearing for the plaintiff submits that while adjudicating an application under Order VII Rule 11 of CPC, the Court shall take the statements made in the plaint to be true and correct. Unless a clear case is made out that the plaint is barred by law, the power under Order VII Rule 11 of CPC shall not be exercised and the suit shall stand for trial.
15. Referring to various paragraphs from the plaint, Mr. Kothari submits that the plaint case as it stands unless tried at the trial, cannot be rejected summarily.
16. Mr. Kothari further submits that the judgment ***In the Matter of: Urmila Kumari Bothra (Supra)*** is under review being **RVW No.49 of 2025.**

DECISION:

17. Since this is an application filed under **Order VII Rule 11** of **CPC**, the cardinal principle for adjudication of the same is repeated once again. The statements made in the plaint are to be taken as correct, true and sacrosanct. The defence, if any, taken in the written statement or to be taken by the defendant would have no relevance while adjudicating an application for rejection of the plaint.

18. The defendant has raised, in the instant case, that the instant suit is barred by law under Section **13** of **BML Act**. For convenience, the provision is quoted below:

“13. Stay of suit when money-lender does not hold licence.

(1) No Court shall pass a decree or order in favour of a money-lender in any suit instituted by a money-lender for the recovery of a loan advanced after the date notified under section 8, or in any suit instituted by a money-lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is satisfied that, at the time or times when the loan or any part thereof was advanced, the money-lender held an effective licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit: if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

(5) In this section, the expression "money-lender" includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the

payment of licence fee and penalty which may be ordered to be paid under this section.”

19. **Sub-section 1 to Section 13** of **BML Act**, inter alia, provides that no Court shall pass a decree or order in favour of a money lender in any suit instituted by a money lender for the recovery of a loan advanced after the date notified under Section 8, or in any suit instituted by a money lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is **satisfied** that, at the time or times when the loan or any part of it was advanced, the money lender held an effective licence.
20. On a meaningful reading of this provision, it appears to this Court that the Court first must come to its satisfaction that the money lender, in the instant case the plaintiff, held an effective licence. The averments made in the plaint, inter alia, at paragraphs **3 to 9, 12, 14 and 48** read with the other paragraphs in the plaint would show that the plaintiff has lent and advanced money by virtue of three agreements and the defendant has received and accepted the loan from the plaintiff. The defendant secured the loan by way of placing **post-dated cheques**. It is true that the averments made in the plaint do not specifically show that at the time of advancing the loan whether the plaintiff had or had not the requisite effective licence under the **BML Act**. Through the instant application the defendant took a specific plea that the plaintiff does not have the requisite

licence and as such, the instant suit is barred by law under the provisions of the **BML Act**.

21. The application under **Order VII Rule 11** of **CPC** filed by the defendant does not contain any denial of the loan transaction. The defendant has only questioned whether the plaintiff had requisite licence under the **BML Act** at the time of advancing the loan. This itself, in the considered view of this Court, is a triable issue, which cannot be gone into in a summary adjudication without holding a proper trial.
22. Inasmuch as, **sub-section 2 to section 13 of the BML Act**, inter alia, provides that if during the trial of a suit to which sub-section **1** applies, the Court finds that the money lender did not hold the requisite licence, the Court **shall**, before proceeding with the suit, require the money lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fees specified under **Section 10**. On a meaningful reading of the said provision, it appears to this Court that there is **no absolute bar** created under the statute to maintain a suit. Before rejecting the plaint, it is the **obligation** of the Court to give an opportunity to the plaintiff lender to cure the defect. However, before granting an opportunity to the plaintiff to cure the defect, if any, the Court must come to a specific finding that the money lender plaintiff did not hold such licence at the time of advancing loan.

23. On a harmonious reading of the said two provisions, this Court is of the firm and considered view that, there is **no absolute bar** at the threshold to maintain a suit. **Sub-section 3 to Section 13 of BML Act** provides, if the money lender fails to pay the penalty within the time fixed sub-Section 2 or within such further time as the Court may allow, the Court may dismiss the suit. This specifically shows that Court has the obligation to allow the money lender to cure the defect, if any, at least once or even more than once by exercising its discretion before dismissing the suit and if the money lender cures the defect by paying penalty, as provided under the statute, the Court is not empowered to dismiss the suit on the ground of absence of requisite licence.
24. Thus, on a harmonious and meaningful reading of the provisions laid down under **Section 13 of BML Act**, this Court is of the firm and considered view that, the instant application claiming rejection of plaint is not maintainable.
25. Inasmuch as and/or in addition, the specific case of the plaintiff pleaded in **paragraph 5** of the plaint is that the plaintiff by way of two separate cheques lent and advanced a total sum of Rs. 25 lakhs. The defendants have encashed both the said cheques and received the amount.
26. **Sub-section 12 to Section 2 of BML Act** defines **loan**. The definition of **loan** as defined under the statute shows, **loan** means an advance, whether of money or in kind, made on conditions of repayment with interest and includes any transaction which is in

substance a loan but **does not include**, inter alia, an advance made on the basis of a **Negotiable Instrument** as defined in the **Negotiable Instruments Act, 1881**, other than a promissory note. **Section 13** of the **Negotiable Instruments Act** defines negotiable Instruments, which includes **cheque**.

27. Therefore, on the basis of this statements made in the plaint specifically in Paragraph 5 thereof, it, appears to this Court that, unless rebutted by the defendants at the trial, it is the specific case of the plaintiff that the money was lent through cheques. The defendants have filed its written statement. The stand of the defendants in its written statement is not be looked at, at this order VII Rule 11 stage. Depending upon the stand that will be taken by the defendants during the trial, the issue shall be decided in accordance with law.
28. Inasmuch as the, other plea taken by the defendants in the instant application that whether the plaintiff is registered as a **Non-Banking Financial Company** under **Section 45-IA** of the **Reserve Bank of India Act, 1934** or that whether there has been any non-compliance of statutory provisions on the part of the plaintiff under **Section 186** of the **Companies Act, 2013** can only be decided upon a detailed fact finding trial being held and not at this order VII Rule 11 stage, as these are mixed questions of law and facts.
29. The judgment ***In the matter: of Dahiben (Supra)*** was rendered on the point of limitation. The law is well settled that if on a plain reading of a plaint, if *ex facie* shows that the suit is barred by law of

limitation, the Court is empowered to reject the plaint at the order VII Rule 11 stage. But it is equally settled that, if the point of limitation in an appropriate case is found to be a mixed questions of law and fact, the suit shall stand for trial.

30. ***In the matter of: Swaika Vanaspati Products Ltd. (Supra)***, the judgment was rendered after trial in an execution case. Hence the ratio laid down therein would not apply in the facts of the instant case, as the trial in the instant case has not yet commenced.
31. The judgment ***In the matter of Smt.: Urmila Kumari Bothra (Supra)*** has also laid down the law of **BML Act** where opportunity was granted to the plaintiff in terms of Section **13(2) of BML Act**.
32. Therefore, first to come to a concluded conclusion whether the plaintiff in the instant case had requisite licence under **BML Act** or not, the Court must arrive at a finding only after holding a properly constituted trial on the basis of a preliminary issue and then the Court shall proceed further in accordance with law.
33. In view of the foregoing reasons and discussions, this Court holds that the instant application filed under **Order VII Rule 11 of CPC** is **devoid of any merit and must fail**.
34. The suit shall stand for **trial**. Whether the plaintiff had requisite licence under **BML Act** on the day when the loan was advanced, should be tried as a preliminary issue, before proceeding any further with the suit.

35. In the event the issues are decided in the **negative** during the trial, the Court shall take further steps in the matter in accordance with law.
36. In the event, however, the plaintiff did not have the requisite licence on the day when the loan was advanced, the plaintiff shall be at liberty to take steps to pay the penalty to the extent of three times the amount of the licence fee specified in **Section 10** of **BML Act** in accordance with **sub-Section 2** of **Section 13** of the **Act** but positively within a period of **three months** from date, failing which if the Court comes to a conclusion that the plaintiff did not have the requisite licence as on the date when the loan was advanced, the Court may take steps in accordance with law. This opportunity granted to the plaintiff shall be treated as an opportunity within the meaning of **Section 13(2)** of the **BML Act**.
37. Accordingly, **IA No. GA-COM/4/2025** stands **dismissed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

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