Supreme Court of India
Mahendra Singh vs Jagbir Singh on 12 January, 1993
Equivalent citations: AIR 1994 SC 762, I (1993) BC 153 SC, JT 1993 (1) SC 105, 1993 (1) SCALE 53, (1993) 2 SCC 34
Bench: K Singh, P Sawant
ORDER

1. The appellant had filed a suit against the respondent for recovery of Rs. 6785/- on the basis of a promissory note and a receipt executed by the respondent on 15th July, 1969 for a cash consideration of Rs. 5,000/-. The trial Court decreed the suit and the decree was confirmed in appeal on 29th July, 1974 by the First Additional District Judge, Muzaffarnagar. The respondent-defendant preferred a Second Appeal before the High Court.

2. During the pendency of the Second Appeal, the U.P. Regulation of Money-Lending Act, 1976 [the 'Act'] came into force on 20th July, 1976. Under Sub-section (4) of Section 26 of the Act, it is provided that notwithstanding anything contained in any contract, decree, or order or any other law for the time being in force, no money-lender shall be entitled to claim any amount from a debtor in respect of any loan advanced prior to the enforcement of the Act unless the moneylender has filed a statement containing particulars of debts due to him and of the deposits made with him in prescribed form with a Registrar appointed under the Act. This statement was to be filed within three months from commencement of the Act. Admittedly, the appellant had not filed any such statement since according to him, he was not a money-lender and the provisions of the Act did not apply to him and to the loan he had advanced to the respondent. The respondent filed an application before the High Court in which he stated that before the trial Court, the appellant had admitted that he had lent money to the tune of approximately Rs. 5-7 or 10 thousand although his main occupation was agriculture. On the basis of the said statement, the respondent contended that the appellant was doing money-lending business and hence the Act applied to him. In the application the respondent, therefore, prayed that the appellant was not entitled to recover any money lent by him and the suit should stand dismissed. On this application, the High Court relying only on the statement made by the appellant in his deposition before the trial Court that he had advanced money to some persons to the tune of Rs. 5-7 or 10 thousand only (as paraphrased in the judgment of the High Court), held that the appellant was doing the business of money-lending and hence the provisions of the Act were applicable to him. Having arrived at that finding, the High Court set aside the decree passed by the trial Court and dismissed the suit of the plaintiff. To complete the narration of facts, it may be mentioned that the appellant had already executed the trial Court decree since no stay of the decree was granted. In the execution of the decree, the respondent's immovable property was brought for auction sale and the appellant had purchased the same and has been in possession of the said property since then.

3. We find much force in the argument advanced by the learned Counsel for the appellant that in order to attract the provisions of the Act, it should be proved that the person concerned was carrying on the business of money-lending. The relevant issue has to be framed and evidence has to be recorded with opportunity to both the parties to lead evidence on the issue. The High Court was clearly wrong in relying on an isolated statement of the appellant in an answer to a question which

was obviously unrelated to the point in question. Even the statement in question, as summarised by the High Court does not amount to an equivocal admission that the appellant was lending money usually and as a matter of business of money-lending. The statement at best, amounts to an admission that the appellant had at the relevant time lent money amounting to about Rs. 10,000/-. In the circumstances, we are of the view that the High Court had exceeded its jurisdiction in recording for the first time in the Second Appeal a finding of fact on the basis of the said stray statement and without recording evidence on the point. The High Court failed to notice that at the time the statement was made, there being no Act in question on the statute book, neither the question could have been asked nor answered, with reference to the aforesaid point.

4. We, therefore, allow the appeal, set aside the impugned order of the High Court and remand the matter to the trial Court for framing the necessary issues viz., whether the appellant was doing the business of money-lending within the meaning of the Act and for giving its findings on the said issue according to law after recording the necessary evidence on the same and for deciding the suit on the basis of the said finding.

5. The appeal is allowed accordingly with no order as to costs.