IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

Before:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Aryak Dutt

APD No. 8 of 2026
With
CS No. 150 of 2020
GA No.1 of 2026
Sudha Kankaria
Vs.
Krishna Kumar Bhatter (HUF)

For the Appellants : Mr. Debrup Bhattacharjee, Adv.
Mr. Subrota Goswami, Adv.

For the Respondents : Mr. Krishnaraj Thaker, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Samriddha Sen, Adv.
Mr. Kaushik De, Adv.
Mr. Raghav Munshi, Adv.
Ms. Mohini Majumdar, Adv.
Ms. Ayelita Ghosh, Adv.
Mr. Adrish Chatterjee, Adv.

Hearing Concluded On : 12.10.2026

Judgment Delivered On : 13.11.2026

Aryak Dutt, J.:

1. The appeal is directed against a judgment and decree dated 8th June, 2026, passed by the learned Single Judge in G.A. No. 3 of 2025 in C.S. No. 150 of 2020 (*Krishna Kumar Bhatter (HUF) v. Sudha Kankaria*). By the impugned judgment, the learned Single Judge allowed the plaintiff's application for judgment upon admission under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") and passed a decree for a sum of Rs. 83,97,808/- with an interest at 15% per annum from 1st December, 2017 until repayment. The applications being G.A. No. 1 of 2021 and G.A. No. 5 of 2025, which were heard along with G.A. No. 3 of 2025, were disposed of as having become infructuous.

2. The respondent/plaintiff, a Hindu Undivided Family, instituted the suit on 3rd December, 2020. It claims Rs. 80,00,000/- as principal and Rs. 27,97,808/- as interest computed up to 31st March, 2020, in all Rs. 1,07,97,808/-, for money lent and advanced to Dilip Chand Kankaria, the deceased husband of the appellant/defendant, with further interest at 15% per annum until repayment.

3. The plaintiff's case is that the loan was advanced in three tranches, namely Rs. 50,00,000/- on 17th June, 2008, Rs. 20,00,000/- on 7th July, 2008 and Rs. 10,00,000/- on 2nd September, 2009, with interest at 15% per annum at four-monthly rests. The borrower died in 2013, whereupon the liability devolved on the defendant, who agreed to repay. Interest was paid until November, 2017. The defendant defaulted from December, 2017.

4. In her written statement, the defendant admitted that Rs. 80,00,000/- had been lent to her late husband. She admitted that interest at the agreed rate had been paid until November, 2017, and that she was not in a position to repay the outstanding sum of Rs. 83,97,808/-, being the principal with interest up to 31st March, 2018. She pleaded without a licence under the Bengal Money Lenders Act, 1940 ("the 1940 Act"), in view of Section 13 of that Act the Plaintiff cannot get a decree. She also pleaded that, from 1st April, 2018, the outstanding sum stood converted into an advance towards the price of an antique framed canvas painting, which the plaintiff had agreed to buy for Rs. 1,50,00,000/-.

5. In G.A. No.1 of 2021, the plaintiff's application for attachment of the defendant's bank accounts and other reliefs, an order dated 22nd March, 2021, restrained the defendant from transferring or alienating one of her properties. That order remained in force until the application was disposed of by the impugned judgment.

6. The learned Single Judge held that the admissions in the written statement were clear and unambiguous, that the disputed question of the proposed sale of the painting need not be gone into, and that the case squarely fell within Order XII Rule 6 of the Code. The impugned judgment does not deal with the defence under the 1940 Act.

7. The appellant contends that the dispute in the suit is a "commercial dispute" within the meaning of Section 2(1)(c)(i) of the Commercial Courts Act, 2015 (hereinafter referred to as "the 2015 Act"), of a value above the Specified Value, as under Section 7 of the 2015 Act the suit had to be heard and disposed of by the Commercial Division of this Court and not on the regular side. Both sides have filed written notes on that question and on the 1940 Act.

8. The respondent points out that this question was never raised in the suit, and has been raised for the first time in the appeal. That, in our view, does not prevent us from deciding it. A new plea that involves only a question of law may be permitted to be raised at the appellate stage.

9. Learned Counsel for the appellant submits that the dispute is a commercial dispute. A combined reading of paragraphs of the plaint shows that in usual course of business, the plaintiff decided to allot amounts as loans to others, for funds designed to invest in developing business in their social community. The defendant's husband approached the plaintiff having encountered financial adversity in operating his business and the plaintiff agreed to lend him an amount, which he was to repay in its entirety, with interest at 15% per annum until repayment. On the plaintiff's own pleading, therefore, the loan was neither an isolated nor a gratuitous transaction between private individuals. It was made in the course of the plaintiff's stated business, as an investment.

10. "Financier" is not defined under the 2015 Act. Relying on the meaning given in the Oxford Universal Dictionary, as noted in ***Ladymoon Towers Private Limited v. Mahendra***

Investment Advisors Private Limited, reported in ***2021 SCC OnLine Cal 4240***, and in P. Ramanatha Aiyar's Law Lexicon, it is said that a "financier" includes "a capitalist". Black's Law Dictionary (4th Edition.) describes a capitalist as "one exclusively dependent on accumulated property, whether denoting a person of large wealth or one having an income from investments".

11. The plaintiff applied for a licence under the 1940 Act, or at least subjected itself to that Act by paying the penalty under Section 13(2), which only a "money-lender", defined in Section 2(13) of that Act as a person who carries on the business of money lending, would do. Interest was paid to the plaintiff after deduction of tax at source. Both limbs of Section 2(1)(c)(i) are therefore satisfied. The plaintiff is a financier, and the loan in suit was advanced in the course of its ordinary transactions.

12. On the 1940 Act, it is submitted that the relevant date for determining whether the plaintiff held a valid licence is the date on which the loan was advanced, as held by a Division Bench of this Court in ***Swaika Vanaspati Products Ltd. v. Canbank Financial Services Ltd.***, reported in ***2000 SCC OnLine Cal 234***. Admittedly, the plaintiff held no licence on those dates. The bar in Section 13(1) can be lifted only in the

manner provided by Section 13(2), namely upon payment of the penalty fixed by the Court "during the trial". The plaintiff's own payment, made on its own motion and before the trial commenced, is not compliance with Section 13(2). Reliance is placed on the judgment dated ***13th May, 2026*** of a Division Bench of this Court in ***Kamlesh Agarwal v. Sulochana Poddar*** being ***APDT No. 8 of 2025***, which held that whether the plaintiff is a money-lender and whether the 1940 Act is attracted raises a triable issue, so that a summary decree could not be passed. At the very least, it is said, a triable issue arose and no decree on admission could have been passed.

13. Learned Counsel for the respondent submits that the plaintiff is not a merchant, banker, trader or financier. It merely gave financial assistance to the defendant's husband, who had encountered difficulties in operating his business and also had some personal financial problems.

14. The borrower undertook to repay the entire principal, and interest was to run only until the principal was repaid. The loan was therefore not given to earn interest. Interest was incidental, and was not the object of the loan. Reliance is placed on the judgment of ***Ladymoon (supra)***, which held that a

commercial purpose would not include an agreement where profit-making is an incidental outcome of the transaction. The meanings of "financier" in the Law Lexicon defined as "one skilled in levying and managing public money; a capitalist" and in Black's Law Dictionary defined as "a person employed in the economical management and application of public money; one skilled in the management of financial affairs", do not fit the plaintiff, which neither levies nor manages public money and is not a capitalist. Neither the plaint nor the written statement shows that lending money is the plaintiff's "ordinary transaction". Even if it were, the transaction in suit was not entered into to earn revenue. The suit was therefore rightly tried on the regular side.

15. On the 1940 Act, it is submitted that, although the plaintiff is not a money-lender, it has by way of abundant caution paid the penalty under Section 13(2), as shown by a challan forming part of its affidavit-in-opposition to G.A. No. 6 of 2025. This Court has consistently held that the defect is curable, and that once the penalty is paid the Court shall proceed with the suit under the second limb of Section 13(3) and may pass a decree. Reliance is placed on ***Swaika Vanaspati (supra),*** and ***Kamlesh Agarwal (supra)*** and ***Sudha Kankaria v. Bhawna***

Bothra being ***APDT No. 2 of 2026***, decided on 18th May, 2026, are distinguished on the ground that no penalty had been paid in those cases. The order of the Supreme Court in ***Rajkumar Santoshi v. Prashant Malik*** relied upon by the appellant in the written notes on argument filed before us, was passed in proceedings under Section 138 of the Negotiable Instruments Act, 1881, contains no provision for curing the defect. It lays down no ratio on the 1940 Act.

16. In the alternative, if the dispute is held to be commercial, the plaint be returned under Order VII Rule 10 of the Code read with its Explanation and Rule 9(2) of the High Court at Calcutta Commercial Courts Practice Directions, 2021, for presentation before the Commercial Division.

17. Section 2(1)(c)(i) of the 2015 Act reads:

> *"(c) 'commercial dispute' means a dispute arising out of—*
>
> *(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;"*

18. Section 2(1)(i) defines "Specified Value", in relation to a commercial dispute, as the value of the subject-matter of the suit as determined in accordance with Section 12, which shall not be less than three lakh rupees or such higher value as may be notified by the Central Government. Under Section 12(1)(a), where the relief sought is for recovery of money, the Specified Value is the money sought to be recovered, inclusive of interest computed up to the date of filing of the suit. The claim here is Rs. 1,07,97,808/-. The requirement of Specified Value is plainly met, and is not disputed.

19. The suit was filed in December, 2020, long after the 2015 Act came into force. It is not a pending suit of the kind contemplated by Section 15.

20. In ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*****,** reported in ***(2020) 15 SCC 585,*** the Supreme Court held that the provisions of the 2015 Act are to be strictly construed, and that it is "necessary to carefully examine and entertain only disputes which actually answers the definition 'commercial disputes' as provided under the Act". The Supreme Court also held that "the nature of the dispute and the jurisdiction to try the same is to be reflected in the suit itself since in a civil

suit the pleadings, namely, averments in the plaint would at the outset be relevant to confer jurisdiction", and that, without such basic pleadings, the question would have to be decided in every suit on extraneous material. A matter falls within the jurisdiction of the Commercial Division if it is a commercial dispute within Section 2(1)(c), and if it is of a Specified Value.

21. In ***T.E. Thomson & Company Limited v. Swarnalata Chopra*****,** reported in ***2025 SCC OnLine Cal 5076***, it was held that whether a suit relates to a commercial dispute is a threshold test, to be decided at the initial stage for the purpose of jurisdiction.

22. A suit for money lent and advanced falls within Section 2(1)(c)(i) only if the conditions are met. The plaintiff must be one of the classes of persons named in the clause, here a banker or a financier. The dispute must also arise out of an ordinary transaction of that person.

23. Following ***Ambalal Sarabhai (supra)***, we decide the question on the basis of the pleadings in the plaint. The plaint must be read as a whole and as the plaintiff chose to frame it. The plaintiff pleads that it carries on various business activities. "*In the course of that business*", it decided

to allot amounts as loans to others, for funds designed to invest in developing business in their social community. The defendant's husband approached it after encountering financial adversity in operating his business. The plaintiff agreed to lend him a sizeable sum, which was to be repaid in its entirety, with interest at 15% per annum until repayment.

24. "Financier" is not defined in the 2015 Act. In ***Ladymoon (supra)***, the Oxford Universal Dictionary was relied on where a financier includes "a capitalist concerned in financial operations", whose objects are "to secure an ample revenue". The Law Lexicon also defines a financier as "a capitalist", and Black's Law Dictionary (4th Edn.) defines a capitalist as including "one having an income from investments".

25. The respondent relies on those parts of the definitions that speak of levying or managing public money. That is the older and narrower sense of the word. It cannot control the meaning of "financiers" in Section 2(1)(c)(i), where the word is placed alongside merchants, bankers and traders in a statute concerned with commercial disputes.

26. The plaintiff is such a person. It allotted funds for lending to others for their businesses, as part of its business activities. In pursuance of that decision it lent Rs. 80,00,000/- to a businessman for his business, at 15% interest per annum.

27. "Ordinary transactions" are the transactions which a person normally or usually enters into, in the regular course of the activity in which it is engaged. Read with the four classes of persons named in Section 2(1)(c)(i), namely merchants, bankers, financiers and traders, we hold that all transactions of each of these four categories of persons, entered into in the course of their respective activities, are ordinary transactions within the meaning of Section 2(1)(c)(i). The plaint pleads a decision, taken in the course of the plaintiff's business, to lend to others for their businesses. The loan in suit is an instance of that activity.

28. Charging of Interest was not incidental to such loan. The borrower was obliged to repay the whole principal and, until such repayment, to pay interest at 15% per annum. That is the ordinary form of an interest-bearing loan. Interest runs from the date of advance until the principal is repaid. It does not mean that interest accrues only upon default. The

rate was a commercial rate, interest was in fact paid for over nine years. The claim in the suit itself includes Rs. 27,97,808/- as interest computed on those terms, and the rate of interest is admitted. Interest was the very return for which the funds were deployed.

29. The terms of the loan are also formal and certain. The plaint pleads the principal, the dates of advance, the rate and rests of interest, the obligation to repay the whole, and interest until repayment. The terms were acted upon for years.

30. In ***Ladymoon (supra)***, it was observed that the placement of the words "such as those relating to mercantile documents" indicates that "only a dispute arising out of a transaction between the named classes of persons which has been formalised by way of a mercantile document will be a 'commercial dispute' under Section 2(1)(c)(i)". This we are unable to accept.

31. We are unable to read the clause in that way. The operative words are "ordinary transactions of merchants, bankers, financiers and traders". The words "such as" introduce examples of such transactions. They do not add a further condition. The words that follow, "including

enforcement and interpretation of such documents", make clear that disputes about the enforcement and interpretation of mercantile documents are included. It would also cut down the words "bankers" and "financiers", since many of the ordinary transactions of bankers and financiers, an advance on a loan account, are not evidenced by any instrument that would ordinarily be called a mercantile document. The clause must be read as a whole, so that every word has a meaning in its place.

32. The observation in ***Ladymoon (supra)***, must also be read in its context. There, the plaint pleaded only an oral understanding and did not plead the existence of any agreement at all. A sentence in a judgment cannot be read out of its context, and a decision is an authority only for what it actually decides. To the extent ***Ladymoon (supra)***, is read as making a mercantile document an indispensable condition for every dispute under Section 2(1)(c)(i), we are unable to agree with it.

33. In the case of ***Varanium Cloud (supra)***, and ***Glasswood Realty (P) Ltd. v. Chandravilas Kailashkumar Kothari*** a Bombay High Court judgment being ***Civil W.P. No. 8393 of 2021,*** rest on the same reasoning. In ***Varanium***

Cloud (supra), the plaintiff was in the business of leasing services, and a single assignment of debt was held not to be its ordinary business. In ***Glasswood Realty (P) Ltd. (supra)***, "a solitary transaction of advancing loan, on friendly terms, unlike a commercial lending with the prevailing market rate" was held to fall short of an ordinary transaction of a financier.

34. Strict construction of Statute requires the Court to satisfy itself that the dispute actually answers the definition. It does not require the definition to be read more narrowly than its words. Here, on the plaintiff's own pleading, it gives the answer.

35. We hold that both conditions of Section 2(1)(c)(i) are satisfied. The plaintiff is a financier, and the dispute arises out of an ordinary transaction undertaken by it in that capacity. The dispute in C.S. No. 150 of 2020 is a commercial dispute within Section 2(1)(c)(i) of the 2015 Act, of a Specified Value.

36. Section 7 of the 2015 Act is mandatory. A suit relating to a commercial dispute of a Specified Value filed in this Court "shall be heard and disposed of" by the Commercial Division. A party is entitled to have a commercial dispute decided under that regime and by the forum Parliament has

designated. The suit was not heard by the Commercial Division. The judgment dated 8thJune, 2026, and the decree passed on it on the regular side, cannot therefore be sustained. The decree was passed on admission under Order XII Rule 6 of the Code makes no difference. The question is of the forum competent to pass any decree in the suit, not of the merits of the claim. The respondent has not contended that the decree could survive if the dispute is held to be commercial.

37. The decree dated 8th June, 2026 is set aside. We express no opinion on the merits of the claim The Commercial Division will decide all these questions on their own merits, uninfluenced by any observation in this judgment or in the impugned judgment.

38. The plaint shall therefore be returned for presentation before the Commercial Division of this court.

39. It will be open to the plaintiff to claim the benefit for the time spent in prosecuting this suit on the regular side. That claim will be decided on its own merits.

40. The order of injunction dated 22nd March, 2021 in G.A. No. 1 of 2021 remained in force for over five years, until that application was disposed of as infructuous by the

impugned judgment. The question of forum was raised for the first time in this appeal. The appellant has agreed before us to be bound by the interim order passed on 22nd March, 2021, to enable the plaintiff to approach the Commercial Division.

41. The dispute in C.S. No. 150 of 2020 is held to be a "commercial dispute" within Section 2(1)(c)(i) of the Commercial Courts Act, 2015, of a Specified Value. The judgment and decree dated 8thJune, 2026, passed in G.A. No. 3 of 2025 in C.S. No. 150 of 2020, decreeing the suit and disposing of G.A. No. 1 of 2021 and G.A. No. 5 of 2025, are set aside.

42. The plaint in C.S. No. 150 of 2020 shall be returned to the plaintiff under Order VII Rule 10 of the Code of Civil Procedure, 1908, read with its Explanation, and Rule 9(2) of the High Court at Calcutta Commercial Courts Practice Directions, 2021, for presentation before the Commercial Division of this Court. The Department shall return the plaint, with the endorsement required by Order VII Rule 10(2) of the Code, within one week of the plaintiff applying for it.

43. Injunction granted by order dated 22nd March, 2021 in G,A. No.1 of 2021 continues for four weeks from the date of this judgment.

44. **APD No. 8 of 2026** is **allowed** to the above extent. G.A. No. 1 of 2026 and all other pending applications if any stand disposed of.

(ARYAK DUTT, J.)

45. I Agree.

(DEBANGSU BASAK, J.)