

(1988) 05 OHC CK 0025

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1902 of 1982

Artabandhu Mohanty

APPELLANT

Vs

Muralidhar Biswal and Others

RESPONDENT

Date of Decision : 13-05-1988

Acts Referred:

Orissa House Rent Control Act, 1967 — Section 13

Citation : (1988) 66 CLT 326

Hon'ble Judges : V. Gopalaswamy, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : S.P. Misra and S. Latif, for the Appellant; K.C.J. Ray, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Gopalaswamy, J.—This writ petition is filed for quashing the order of the Collector, Cuttack, passed in O. M. 1. Appeal No. 12 of 1978.

2. The facts giving rise to the writ application may be briefly stated thus: One Bhagaban Mohanty the father of the present writ Petitioner and opposite parties 4 to 6, was a registered money-lender under the Orissa Money-Lenders Act 1939 (hereinafter referred to as "the Act"). He had the registration certificate No. 8/69 dated 21-2-1969 for carrying on money lending business to the tune of Rs. 4,000/-, and the same was valid for a period of five years and thereafter the same was renewed for a further period of five years under Certificate No. 5/74 dated 20-3-1974. On a petition filed by the moneylender Bhagaban Mohan the Sub-divisional Officer, Athgarh initiated a proceeding u/s 18-8 of the Act which was registered as M. I. Misc. Case No. 20/76, for the purpose of scrutinising his loan transactions. The opposite party No. 1, who borrowed cash and paddy from the said Bhagaban Mohanty during the years 1971 and 1973, along with the other debtors opposite parties 7 and 8 entered appearance in the said proceeding and filed an objection alleging that as the transactions of the money-lender far exceeded the amount specified in the registration certificate, his certificate

willable to be cancelled u/s 18-B (4) of the Act. The S.D.O. after enquiry, rejected the objection petition filed by the opposite parties I, 7 and 8 and passed an order u/s 18-B (2) of the Act on 14-8-1978 declaring the particulars of the transactions which were within the limits of Rs. 4.000/-, the amount specified in the certificate. Against the said order dated 14-8-1978 passed by the S.D.O., the present opposite party No. 1 preferred O. M. I. Appeal No. 12 of 1978 u/s 18-B (6) of the Act before the Collector, Cuttack. The appeal was allowed and the Collector, Cuttack, passed the order dated 21-8-1982 setting aside the order of the S.D.O. and cancelling the Registration Certificate No. 5/74 of the money-lender Bhagaban Mohanty and further disqualifying him from being registered as a moneylender "for a period of three years. Being, aggrieved by the said order of the Collector (Annexure-2). the present writ petition is filed by the son of late Bhagaban Mohanty for quashing the same. .

3. The learned Counsel for the Petitioner contended that u/s 18-B (6) of the Act, it is only the moneylender who has the right of appeal against the order passed by the S.D.O. under Sub-section (2) of Section 18-B and, therefore, the appeal preferred by the debtor-opposite party No. 1 Muralidhar Biswal should not have been entertained by the Collector, 4. For appreciating the point of issue, a reference to Sub-sections (5) and (6) of Section 18-B of the Act would be necessary and hence, the same are quoted below:"

(5) An order made under Sub-section (2) or Sub-section (4) shall forthwith be communicated to the concerned money-lender by the authority who has made the order.

(6) Any person aggrieved by an order passed under Sub-section (2) or Sub-section (4) may within one month from the date of communication of the said order, prefer an appeal before such authority as may be specified in the notification referred to in Sub-section (1).

On a reading of Sub-sections (5) and (6) of Section 18-B quoted above it is seen that an order passed under Sub-section (2) shall forthwith be communicated to the concerned money-lender and any person aggrieved by the order may prefer an appeal within one month from the date of communication of the said order. The learned Counsel for the Petitioner contended that since the order passed under Sub-section (2) ought to be communicated only to the money-lender it was only the money-lender that had the right of appeal under Sub-section (6). In this context, the learned Counsel relied upon several decisions of this Court in interpreting the provisions of Section 13 of the Orissa House Rent Control Act, 1967 and Rule 13 framed thereunder, according to which it was held that only the orders which are communicated to a party are appealable see *Mangalal Sharma v. Smt. Maya Dutta and Ors.* ILR (1972) 2 Cutt. 455.

5. As held by the Supreme Court in *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others*, , it is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act,

and decisions rendered with reference to construction of one Act cannot apply with reference to the provisions of another Act, unless the two Acts are in *pari materia*. Where Acts are so related as to form a system or Code of legislation and when they relate to same persons or things or to the same class of persons or things or have the same purpose or object, the statutes are called in *pari materia*. See *Shaik Sheriff Vs. Mahado Seetha Ram and Others*, . The preamble of the Orissa House Rent Control Act, 1967 would show that it is an Act to provide for the control of house rent in the State of Orissa. It is enacted with a view to give protection to the tenants from illegal eviction by the landlords. The Orissa Money-Lenders Act, 1939 is enacted to regulate money-lending transactions and to grant relief to debtors in the State of Orissa. On a perusal of the provisions of the two Acts, it is clear that the subject matters with which they deal are totally different and there is absolutely no similarity between the two enactments. Hence the two Acts cannot be considered to be in *pari materia*. It was observed by the Supreme Court in *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another*, , that arguments by analogy may be misleading and it is not safe to pronounce on the provisions of one Act with reference to the decisions dealing with other Acts which may not be in *pari materia*. The meanings of words and expressions used in an Act take their colour from the context in which they appear see *District Board of Farrukhabad Vs. Prag Dutt and Others*, . Hence, we find that it is not in accordance with the established rules of construction of statutes that "an attempt should be made for interpreting the provisions of Sub-section (6) of Section 18-B of the Orissa Money Lenders Act with reference to the decisions dealing with the provisions of Section 13 of the Orissa House Rent Control Act, 1967 and Rule 13 framed thereunder.

6. The learned Counsel for the Petitioner contended that as the order passed under Sub-section (2) was communicated only to the concerned money-lender, it was only on him that a right of appeal was conferred under Sub-section (6). If the object of Sub-section (6) is to confer the right of appeal only on the money-lender but not on the debtor, then in that Sub-section instead of the expression "any person aggrieved", "any money-lender aggrieved" or merely "the money-lender aggrieved" would have been used. If it is the communication of the order that gives rise to the right of appeal, as contended by the Petitioner, then it would have been clearly indicated by stating in Sub-section (6) "within one month from the date of communication of the said order to him", thus by adding "to him" after the clause "within one month from the date of communication of the said order" and more so as the Sub-section commences with the expression "any person aggrieved". From a reading of Sub-section (6), it is clear that the communication of the order is material for determining the last date for preferring the appeal, as the appeal should be preferred within one month from the date of communication of the order whether it is preferred by the money-lender or the debtor, whoever is aggrieved. The very fact that Sub-section (3) of Section 18-B provides that the order under Sub-section (2) shall be published by

affixture in the notice board of the authority passing the order, and copies thereof shall also be sent to the Block development Officer, and the Tahsildar within whose legal limits of jurisdiction the money-lender's principal place of business is situate, for publication by affixture in the notice boards of their offices, would show that such publication is meant to communicate the order passed under Sub-section (2) to all, including the concerned debtors. So, the provisions of Sub-section (3) lend support to the view that the expression "any person aggrieved" has been used in Sub-section (6) so as to confer the right of appeal against an order under Sub-section (2) on the concerned debtor as well. The very nature of the proceedings under Sub-section (2) is such that there is scope for the concerned debtor being aggrieved by an improper order passed under Sub-section (2), if the authority has determined the transactions of the money-lender to the debtor's prejudice. In the present case opposite party No. 1 Muralidhar Biswal (one of the debtors of the money-lender) had in fact participated in the proceedings under Sub-section (2) before the S.D.O. and being aggrieved by the order passed by the S.D.O. preferred the appeal before the Collector. So, we hold that the appeal preferred by him before the Collector was maintainable in view of the provisions of Sub-section (6) of the Act.

7. By the relevant date the money-lender Bhagaban Mohanty was having the Registration Certificate No. 5 of 1974 which was valid up to the year] 979. According to the definitions under the Act, "business of money-lending" means the business of advancing loans and "loan" means an advance whether of money or in kind on interest. The maximum capital in respect of which he holds certificate is Rs. 4.000/-. Under Rule 1 (e) of the Money-Lenders Rules "maximum capital" means the highest total amount of the capital sums which may remain invested in a money-lender business on any day during the period of the registration certificate. The accounts furnished by the moneylender disclosed that he had advanced money and paddy to several persons during the years 1971,,1973, 1976 and 1976. So, in the M. 1. Misc. Case No. 20 of 1976, the S.D.O. should have taken into consideration all the loan transactions which still remained unpaid by the date of his scrutiny including those of the years 1975 and 1976. For computing the total amount of the capital invested in his money-lending business the S.D.O. should have accepted the cost of paddy as stated by the money-lender in his accounts.

8. Under Sub-section (8) of Section 18-B of the Act, no Court shall entertain any claim in respect of any loan advanced prior to the date of the order referred to in Sub-section (2) unless the particulars thereof are contained in the said order and all suits in respect of such claims shall stand abated. But the Collector, while passing the impugned order, has not declared the particulars of the transactions that are within the amount specified in the Registration Certificate No. 5 of 1974. This is a serious infirmity in his order to the prejudice of the moneylender, in that he is deprived of his legitimate right to realise even the loans advanced by him in accordance" with the provisions of the Act even though they might not exceed the monetary limit specified in the Registration Certificate.

9. On a careful consideration of the material on record, we find that the Collector as well as the S.D.O. have not properly applied their minds to all the material aspects of the case. It is necessary in the interests of justice that a proper order should be passed by the S.D.O. after taking into account all the material facts and circumstances .of the case as indicated earlier.

10. In the result, we quash the orders of the Collector (Annexure-2) and the S.D.O.. (Annexure-1) and remand M. I. Misc. Case No. 20 of 1976 to the S.D.O. for fresh disposal according to law after giving an opportunity of hearing to the parties. The parties are directed to appear before the S.D.O, on the 6th. June, 1988 and the S.D.O. is directed to dispose of the case by the end of August, 1988. The records be sent back forthwith to the S.D.O. Athgarh.

11. Accordingly, the writ application is allowed. Parties to bear their own costs.

R.C. Patnaik, J.

12. I agree.