
(1989) 03 BOM CK 0004
In the Bombay High Court
Case No : Civil Reference No. 3 of 1988

Bhanushankar Jatashankar Bhatt

APPELLANT

Vs

Kamal Tara Builders Pvt. Ltd. and another

RESPONDENT

Date of Decision : 17-03-1989

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 2(6), 2(6)(vi), 2(9), 2(9), 2(9)(f)
Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 14, 246

Citation : (1989) MhLj 440

Hon'ble Judges : Sujata Manohar, J;C.S. Dkarmadhikari, J

Bench : Division Bench

Advocate : Milind Sathe with K.R. Belosay, for the Appellant; N.H. Pathak, For defendant No. 1, Madhukar Soochak with Sudarshan Shingharani, For defendant No. 2, for the Respondent

Judgement

C.S. Dkarmadhikari, J.—This reference u/s 113 of the Code of Civil Procedure, has been made by Shri Mani, Judge, City Civil Court, Bombay for seeking opinion of this Court as to whether the provisions of Section 2(9)(f) and Section 2(9)(f-I) of the Bombay Money Lenders Act, 1946 are ultra vires the provisions of the Constitution of India.

2. The Plaintiff Bhanushankar Jatashankar Bhatt filed a suit against the defendants Kamal Tara Builders Pvt. Ltd. and Madan Tarachand Samant. The claim in the suit is based on a bill of exchange dated 1st of December 1983 for a sum of Rs. 20,000 drawn by the defendant No. 1 and alleged to have been accepted by the defendant Not 2. Defendant No. 1 did not appear in the suit. Defendant No. 2 filed his affidavit in reply dated 20th April 1987 to the summons for judgment in which he prayed for grant of unconditional leave to defend the suit. Since the defendant No. 1.did not contest the suit an ex parte decree came to be passed against him and unconditional leave is granted to the defendant No. 2. One of the contentions raised by the 3 defendant No. 2 related to the validity of the aforesaid provisions of the Bombay Money Lenders Act. Since the learned

Judge felt that the determination of the said question was necessary for the disposal of the suit, he referred the matter to this Court for opinion.

3. Shri Soochak, learned counsel appearing for the defendant No. 2 Madan Tarachand Samant, contended before us that the aforesaid provisions of the Money Lenders Act are unconstitutional since the State Legislature had no authority or competence to legislate on the said subject. According to the learned counsel list I of the 7th Schedule, entry No. 46 deals with the bills of exchange, cheques, promissory notes and other like instruments. The impugned provisions of the Bombay Money Lenders Act deal with the bills of exchange etc. and therefore the Parliament alone was competent to legislate on the subject. List II of the 7th Schedule, which is a State list, by entry 30 only empowers the State Legislature to legislate on money lending, money lenders and relief of agricultural indebtedness. Therefore the said provisions are ultra vires, since the State Legislature was not competent to legislate on the subject.

4. We find it difficult to accept these contentions of Shri Soochak. It is no doubt true that Entry 46, List I i.e. Union List of the 7th Schedule authorises the Parliament to legislate on the subject dealing with the bills of exchange, cheques and promissory notes and other like instruments, whereas entry 30 of List II - the State List, deals with the money lending, money lenders and relief of agricultural indebtedness. However, it cannot be forgotten that the Bombay Money Lenders Act, 1946 is enacted by the State Legislature by virtue of the powers conferred upon it by the State List, Entry 30 of the 7th Schedule. If the pith and substance of the legislation is taken into consideration it is quite obvious that the enactment namely Money Lenders Act is covered by the said entry. As observed by the Supreme Court in *M/s. Ujagar Prints etc. vs. Union of India and ors.*, AIR 1989 SC 516:

23.....Entries to the legislative lists; it must be recalled, are not sources of the legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine of pith and substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially with respect to the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry the matter may well be taken to be legislation on the topic...

5. It is not necessary to deal with this aspect in any further details in view of the authoritative pronouncement of the Privy Council in AIR 1947 60 (Privy Council) . While dealing with somewhat similar provisions and the entries in the Government of India Act of 1935, the Privy Council held that the Bengal Money Lenders Act is not void either in whole or in part as being ultra vires the Provincial Legislature. The pith and substance of the Act being money lending it comes within Schedule 7, List II, Item 27, Government of India Act and

therefore, is within the competence of the Provincial Legislature and is not rendered invalid because it incidentally trenches upon matters reserved to the Federal Legislature, namely promissory notes and banking in Schedule 7, list I, Items 28 and 38, of the Government of India Act. Since the controversy raised before us is identical to one decided by the Privy Council in the aforesaid decision, we have no hesitation in negating the contention raised by Shri Soochak. Similar view seems to have been taken by the Patna High Court in *Meghraj Tibrawala Vs. Panchu Sahu Teli and Others*, .

6. It was then contended by Shri Soochak that the provisions of Section 2(9)(f) and (f-1) are also violative of Article 14 of the Constitution since it excludes from its import the borrowings above Rs. 3000/- . The distinction made on the basis of the borrowings has no reasonable nexus with the object sought to be achieved. It results in hostile discrimination between the persons belonging to same class of borrowers and, therefore, the said provisions are violative of Article 14 of the Constitution. It is also not possible for us to accept this contention. Section 2(9)(f) and (f-1) of the Bombay Money Lenders Act read as under :

2(9)(f) - an advance of any sum exceeding rupees three thousand made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 other than a promissory note.

2(9)(f-1) - an advance of any sum exceeding rupees three thousand made on the basis of a hundi (written in English or any Indian language).

Section 2(9) defines the expression "loan" to mean an advance at interest whether of money or in kind, but does not include items Nos. (a) to (g) enumerated in the said definition clause. Therefore the expression "loan" as defined in Section 2(9) of the Act will not take in its import the advance referred to in sub-clauses (f) and (f-1). The statement of objects and reasons to Bombay Money Lenders Act, 1946 reads as under :

If a concerted attempt is to be made to improve the economic condition of the bulk of the rural population and the poorer sections of the population in towns and cities, it is necessary that adequate measures should be taken to protect these persons from exploitation by other sections of the community. The poorer individual is at present unable to resist the economic forces that surround him; and unless the State intervenes and protects his legitimate economic rights, it will not be possible to restore to him the keenness and initiative which are essential for increased productive effort on his part.

In the case of the agrarian population the Agricultural Debtors Act, 1947 will adjust and liquidate existing debts, but controlled credit must be provided in future for short term and long-term agricultural finance in order to secure that the agrarian population will not get hopelessly into debt again.

Similarly in towns and cities a large section of the labour and lower middle class population are exploited by many unscrupulous moneylenders and it is therefore

necessary to control the operation of the latter all over the State.

From this statement of objects and reasons it is quite clear that the Act was enacted for the poorer individuals who are unable to resist the economic forces that surround them. It was enacted to improve the economic condition of the bulk of the rural population and the poorer sections of the population in towns and cities. The intention behind the legislation is made further clear from the statement of objects and reasons appended to the Act XX of 1977 by "which certain provisions came to be amended. The said statement of objects and reasons reads as under : ?

The Bombay Money Lenders Act, 1946 was amended by Maharashtra Act 76 of 1975 with a view to checking the evils of unauthorised money lending and increasing indebtedness of the weaker sections of the community and to streamline the implementation of the Act. When the Amendment Act was brought into force on the 29th July 1976, Government received representations from various institutions, indicating the difficulties experienced by them. Government has examined these representations and has decided to amend certain provisions and to delete certain provisions of the Act, to overcome some genuine difficulties experienced by the businessmen and their institutions.

2. The following notes on clauses explain the important provisions of the Bill:

Clause 2. It is proposed to exempt the negotiable instruments (other than promissory notes) and Hundis, when the advance made is for a sum exceeding Rs. 3000 from the definition of "loan". Smaller advances on these instruments, however, will continue to be regulated by the Act. The other exemption proposed under this clause is for any advance made bona fide by a businessman, not having for its primary object the lending of money, if such- advance is made in the regular course of this business.....

7. Thus it is obvious that after the Amendment Act was brought into force on 29th July 1976, the Government received representations from various institutions, indicating the difficulties experienced by them. These representations were examined by the Government and to overcome some genuine difficulties experienced by the businessmen and their institutions, impugned provisions came to be enacted. The proposal to exempt the Negotiable Instruments (other than promissory notes) when an advance made is for a sum exceeding Rs. 3000 was, thought necessary in view of the representations made. Prior to this amendment by Section 2(9)(f) all advances made on the basis of Negotiable Instruments as defined in the Negotiable Instruments Act, 1881 (other than promissory notes) were excluded from the import of the expression "loan" as defined in the Act. By the Amending Act advances of any sum exceeding Rs. 3000 are now excluded. Thus the advances below Rs. 3000 and above Rs. 3000 made on the basis of the negotiable instruments or Hundis, are treated distinctly and this has been done with an obvious object. The small borrowers borrowing an amount of less than Rs. 3000 belong to a distinct and

separate class. The distinction made on the basis of borrowings is also reasonable and cannot be termed as arbitrary. The impugned provisions are enacted to protect large section of the labour and lower middle class population from exploitation by unscrupulous money lenders. The Money Lenders Act itself was enacted to give protection to the poorer section of the society who are unable to resist with the economic forces that surround them. While dealing with somewhat similar challenge the Madras High Court in J.D. Nichani and Another Vs. State of Madras, observed as under :

9. Section 2(6)(vi) has exempted the operation of the Act in regard to loans evidenced by Negotiable Instruments exceeding Rs. 3000 the underlying idea being that persons who borrow such large amounts of Rs. 3000 and above on executing negotiable instruments can well take care of themselves and that protection afforded by this Act would not be necessary as it is essentially one for the protection of the impecunious and helpless borrowers. We are, therefore, of opinion that there is nothing in Section 2(6) of the Act to show that there has been a discrimination in the application of the Act itself. The materials now available show that the evil of the money lenders' exploitation was with reference to lower middle class people, particularly, the salaried servants and wage earners. The distinction made u/s 2(6) in the cases specified therein and other cases of advances, is, therefore, reasonable.

We respectfully agree with the view taken by the Madras High Court. It is by now well settled that what Article 14 forbids is hostile discrimination and not reasonable classification. Equality before law does not mean that the same set of law should apply to all persons under every circumstances ignoring differences and disparities between men and things. It is for the State to make a reasonable classification which must fulfil two conditions : (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, (2) The differentia must have a reasonable nexus to the object sought to be achieved by the statute - See *Pathumma and Others Vs. State of Kerala and Others*, . If the classification contemplated by section 2(9)(f) and (f-1) is tested on this touch stone, it is quite obvious that the said classification is not arbitrary but is reasonable. The restriction, imposed upon the fundamental rights of money lenders to carry on business is also in the public interest and could safely be termed as a reasonable restriction. Therefore we hold that the impugned provisions of the Bombay Money Lenders Act are not ultra vires either for want of competence on the part of the State Legislature, or under Article 14 of the Constitution of India. Therefore The references answered accordingly.

The Registrar is directed to transmit a copy of this judgment to the Court concerned i.e. City Civil Court at Bombay. It is needless to say that thereafter the City Civil Court at Bombay, will proceed to dispose of the case in accordance with law