
(1959) 08 MP CK 0012
In the Madhya Pradesh High Court
Case No : C.R. No 469 of 1958

Bheru Singh Gulabji

APPELLANT

Vs

Rao Kanhaiyalal Govind Singh

RESPONDENT

Date of Decision : 31-08-1959

Acts Referred:

Madhya Bharat Money Lenders Act, 1950 — Section 3(3)

Citation : (1960) JLJ 226 : (1959) MPLJ 49

Hon'ble Judges : V.R. Nevaskar, J

Bench : Single Bench

Advocate : S.L. Dubey, for the Appellant; N.A. Phadke, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Nevaskar, J.

The only question involved in this petition is regarding the maintainability of the present suit in the absence of a certificate of registration under the Madhya Bharat Money Lenders Act, at the time of the institution of the suit.

The Plaintiff who is a moneylender within the meaning of the Madhya Bharat Money Lenders Act was not registered as a moneylender as required by the Act, but after the institution of the suit by him against the Defendant who was an agriculturist, he got himself registered as a moneylender and obtained a certificate to that effect.

The Defendant maintained that in view of the provisions of Section 3(3) of the Madhya Bharat Money Lenders Act the suit was not maintainable and ought to be dismissed.

The learned Civil Judge, Mahidpur, before whom the case was proceeding, accepted the Defendant's contention and dismissed the suit.

The Plaintiff appealed and the appellate Court reversed the decision relying upon the decisions in Patiram v. Baliram 1963 NLJ 517 SIC : A I R 1954 Nag. 44 and

Pannalal v. Dhanji 1956 M B L J 1071, and held that as the Plaintiff had got himself registered by the time the case was ripe for judgment the order of dismissal of the suit was illegal and improper. The suit was accordingly decreed as the trial Court had found other issues in Plaintiff's favour.

In this revision petition it is contended that the Court below had acted contrary to the provisions of the Madhya Bharat Money Lenders Act in entertaining the present suit. It is not disputed that the Plaintiff is a moneylender and the Defendant an agriculturist within the meaning of the Act and the only question is what is the effect of Section 3(3) of the Madhya Bharat Money Lenders Act. In order to appreciate this contention it is necessary to refer to the said provisions of the Act, which is as follows:

No moneylender shall be entitled to bring any suit for the recovery of his loan unless the provisions of this section are complied with.

It is clear that with the wording of the Madhya Bharat Money Lenders Act as it stands, the Plaintiff who is a moneylender and had not got himself registered as a moneylender on the date of the institution of the suit could not bring the suit against the Defendant who is an agriculturist. The word "bring" in this provision is significant and strikes at the very right of institution of the suit. A Plaintiff who has not got himself registered as a moneylender and had not obtained a necessary certificate has no right to enforce his claim in a Court of law by instituting a suit.

The Court below referred to and relied upon the decision reported in AIR 1954 Nag. 44, which is relied upon in a decision reported in 1956 M.B.L.J. 1071.

In my opinion none of these decisions will have any application. The Nagpur decision is based on the terms of Section 11 of the Central Provinces and Berar Money Lenders Act which contains the expression "shall proceed" in place of "shall be entitled to bring the suit" as found in the Madhya Bharat Money Lenders Act. Under the former Act the institution of suit in the absence of a valid registration certificate is not prohibited. It is only its further progress after its institution which is stopped. It is therefore competent for a Plaintiff to obtain the necessary certificate while the suit, which is validly instituted, is pending and ask for further progress of the suit. Such is not the case in the Madhya Bharat Money Lenders Act where the very bringing of the suit is prohibited. If then such a suit is brought without complying with the provisions of Section 3 of the Act, the suit is bad. There is nothing in the Act express or implied where-from it can be said that the institution of the suit under the circumstances, which is bad at the inception, is intended to be cured or condoned. In the absence of such curing provision what is bad at the inception continues to be so and I know of no legal principle from which it can be said that the default of a party of this description can get itself cured by securing a certificate during the pendency of the suit. Provisions akin to the present are not wanting. Section 80 of the CPC is one such provision. There the provision is to the effect that a suit against the Government

etc. "shall not be instituted" until expiration of two months "after notice" containing certain particulars mentioned in the section. Where such a suit is instituted without the notice aforesaid is bad and the defect cannot be cured later after its institution vide Mahadev Dattatraya Rajarshi Vs. Secretary of State for India, The second of the aforesaid cases holds that in the absence of a notice in accordance with the section the Court has no jurisdiction to entertain suit. If a Court entertains such a suit a petition for revision lies in the High Court. There are other similar provisions such as Section 69 of the Indian Partnership Act, with respect to which similar view is entertained.

The decision in 1956 M. B. L. J. 1071 has no real bearing on the question under consideration. The question there considered is whether a moneylender ought to hold a certificate of registration at the time he deals with an agriculturist or could obtain it even later prior to the institution of the suit. It was held that the Act does not render transactions with a moneylender in the absence of a certificate of registration illegal or against public policy and hence void but only requires fulfilment of the condition regarding registration before institution of the suit.

The entertainment of the suit and decree passed therein are therefore without jurisdiction. The decree of the lower appellate Court is therefore set aside and the suit is held not entertainable and consequently dismissed. The Petitioner is entitled to his costs throughout from the opponent.