

(1938) 05 CAL CK 0006
In the Calcutta High Court

Firm Hari Mohan Gobinda Chandra Das and Others	APPELLANT
Vs	
Amritalal Chaudhury and Others	RESPONDENT

Date of Decision : 19-05-1938

Acts Referred:

Bengal Money Lenders Act, 1940 — Section 4

Citation : AIR 1938 Cal 665

Hon'ble Judges : Nasim Ali, J;Henderson, J

Bench : Full Bench

Judgement

Nasim Ali, J.—This appeal arises out of a suit for recovery of Rs. 21,303-13.5 gd.s on a bond executed by the defendants in favour of the plaintiffs on 24th Assar 1340, corresponding to 8th July 1933. The consideration of this bond is Rs. 18,740-6-0. This amount is made up of Rs. 4257-13-3 advanced in cash by the plaintiffs to the defendants from the year 1916 up to the year 1922 and the arrears of interest due on the amount advanced. The claim in the suit includes Rs. 2526-7.5 as interest on the amount mentioned as consideration for the bond. The only defence which is relevant for the purpose of the present appeal is that Section 4, Bengal Money-lenders Act, applies to this case and that the plaintiffs are not entitled to recover more than Rs. 8515-10-6, that is Eg. 4257-13-3 advanced in cash as principal and an equal amount as interest. This defence has been given effect to by the trial Judge and the plaintiffs' suit has been decreed for Rs. 8515-10-6. Hence this appeal by the plaintiffs.

2. Two points were raised by Mr. Gupta on behalf of the appellants in this appeal : (1) That Section 4 does not apply to the facts of the present case. (2) That even if it does apply the principal of the loan in the present case must be taken to be the amount advanced in cash as well as the arrears of interest on that amount which were capitalized from time to time and were taken to be part of the principal secured by the bond in suit. The present suit was instituted on 5th June 1934. The Bengal Money-lenders Act came into operation on 1st July 1934. The question for determination therefore is whether Section 4 of this Act

applies to this suit.

The law as it existed when the action was commenced must decide the rights of the parties unless the Legislature expresses a clear intention to vary the relation of litigant parties to each other : per Lord Denman C.J. in *Hitchcock v. Way* (1837) 6 A & E 943.

It is a general rule that where the Legislature alters the rights of the parties by taking away or conferring any rights of action, its enactments, unless in express terms they apply to pending actions, do not affect them : per Jessel M. R. in *Re: Joseph Suche & Co. Ltd.* (1875) 1 Ch D 48.

It certainly was considered in many cases that where a person had commenced an action, he had a vested right and that any subsequent statute ought not to be construed as retroactive so as to alter that right. This is not an inflexible rule and it does not apply if the language of the Statute is clear and express : per Pollock B in *A.G. v. Theobald* (1890) 24 QBD 557.

3. Now if the Legislature want to affect existing right, they must express their intention by using words in the statute which would expressly or by necessary implication make the statute retroactive. The contention of Mr. Roy appearing on behalf of the respondents is that the object of the Bengal Money-lenders Act as stated in the preamble is to make better provision for the control of moneylenders and to give additional powers to the Court to deal with moneylending in Bengal and that unless Section 4 applies to pending actions, the whole object of the Act would be defeated. The preamble however must be read along with the Sections of the Act. Section 4 is in these terms:

Notwithstanding anything in any other Act, where in any suit in respect of any money lent by a money-lender before the commencement of this Act, it is found that the arrears of interest amount to a sum greater than the principal of the loan, the Court, unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan.

4. It was argued by Mr. Roy that the words "any suit" in Section 4 are very wide and consequently they include pending suits as well as suits which may be instituted after the commencement of the Act. In other words the argument is that as there are no limitations about the suits in which the Court is to exercise its powers under this Act, the necessary implication is that all suits irrespective of the question whether they are filed before or after the Act would come under the Act, provided they are in respect of any money lent before the commencement of this Act. I am unable to accept this contention. Section 6 deals with suits in respect of loans made after the commencement of the Act. Under that Section the Court is prohibited from granting a decree on account of arrears of interest a sum greater than the principal of the loan. No option is left to the Court and it is not open to the creditor to plead any circumstances which would entitle him to claim on account of arrears of interest any sum greater than

the principal of the loan. When we come to Section 4 which deals with loan before the commencement of the Act, we find that ordinarily the amount of interest cannot be decreed in excess of the principal of the loan. But the creditor can claim a larger amount if he can satisfy the Court that he had reasonable grounds for not enforcing his claim earlier. Exception has therefore been made in cases of creditors who had reasonable grounds for not enforcing their claim earlier. A creditor suing for the recovery of a loan is entitled to plead this exception. This is however impossible if the suit has already been instituted before the commencement of the Act. It* may be said that after the commencement of the Act the plaintiff may amend his plaint and plead the exception. That may be so, but this exception in favour of the creditor who lent money before the commencement of the Act is an indication that the Legislature was not contemplating suits in respect of money lent before the commencement of the Act, which had already been instituted before the Act came into operation.

5. The mere use of the words "any suit" does not by itself show that the Section is to be applied to pending actions as well. In *Doolubdass Pettamberdass v. Ramloll Thac-koorseydass* (1851) 5 MIA 109 their Lordships of the Judicial Committee had to construe the Act of 1848 whereby certain contracts were rendered invalid. That Act provides:

That all agreements, whether made in speaking, writing or otherwise, by way of gaming or wagering, shall be null and void; and no suit shall be allowed in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager, or entrusted to any person to abide the event of any game, or on which any wager is made.

6. In construing this Act their Lordships observed:

Their Lordships are of opinion that this legislative Act is not to be construed as affecting existing contracts; at all events, not those contracts on which actions have already been commenced, for Statutes are *prima facie* deemed to be prospective only *nova constitutio futuris formam imponere debet non praeteritis* (2 Inst. 392), and there are no words in this Act sufficient to show that intention of the Legislature to affect existing rights.

7. I am therefore of opinion that Section 4 was not intended to touch the existing rights of the creditors who had already commenced their action. This view is supported by the decision of this Court in *Lalmohan Rauth v. Kunja Behari Das* 41 CWN 499. For the reasons given above, I hold that Section 4 does not apply to this suit. In view of my decision on the first point, it is not necessary to express any opinion on the second point raised by Mr. Gupta. The result therefore is that this appeal is allowed. The suit is decreed in full with full costs in this Court as well as in the trial Court. The plaintiff will get interest at the rate of six per cent per annum from the date of the institution of the suit until realization.

Henderson, J.

8. I agree. The point at issue had to be considered in a case heard by Cunliffe J. and myself: vide *Mrinalini Debi Vs. Harlal Roy*, . Nothing stated here would induce me to depart from the opinion which I expressed on that occasion.