

(1964) 10 PAT CK 0007

In the Patna High Court

Case No : Letter Patent Appeal No. 94 of 1959

Goswami Garibanand Das and Another

APPELLANT

Vs

Manu Lal and Others

RESPONDENT

Date of Decision : 07-10-1964

Acts Referred:

Citation : AIR 1965 Patna 202

Hon'ble Judges : S.C. Misra, J;G.N. Prasad, J

Bench : Division Bench

Advocate : Shambhu Barmeshwar Prasad, for the Appellant; A.G. and Bindeshri Prasad Sinha, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—This is an appeal by the plaintiff. He advanced a loan on foot of a handnote for a sum of Rs. 5,000/- to two of the defendants. It is admitted that the plaintiff was granted a license under the Bihar Money Lenders Act for carrying on money lending transaction to the tune of Rs. 4,999/-. The handnote was executed on 6-9-1949 and the suit was instituted on 4-9-1952.

2. The defence taken on behalf of the respondents is that the handnote was not genuine, nor did any consideration pass under it. It was pleaded further that the plaintiff was not a registered money lender and as such, he was not entitled to institute the suit for recovery of the amount covered by the handnote.

3. The learned Subordinate Judge, who tried the suit, passed a decree in favour of the plaintiff for the entire amount paid by him. On appeal to this Court, however, the learned Single Judge, against whose judgment this appeal has been preferred under the Letters Patent, allowed it, as, in his opinion, the plaintiff, having advanced a loan exceeding the maximum amount permissible to him to advance under the certificate granted to him under the Money Lenders Act, his entire suit was affected by the prohibition u/s 4 of this Act and as such he was not entitled to a decree. This appeal is directed against that judgment

4. Learned counsel for the appellant has urged that the judgment of the learned single Judge should be set aside and that of the learned Subordinate Judge restored. According to learned counsel, the requirement of section 4 of the Money Lenders Act (Bihar Act 7 of 1939) is fulfilled as soon as the money lender, who has brought the suit for recovery of a debt advanced by him is able to show that he holds a license as a money lender. Section 4 does not impose any disability on the money lender, so far as the carrying on of money lending transaction is concerned, even if he does not hold a license for the entire amount of his transaction.

The money lender carrying on transaction of money lending in violation of the rule requiring the taking out of a license fixing the maximum amount to carry on the business may expose himself to the penalty provided by law for doing so. That, however, does not stand in the way of the court passing a decree, if the essential requirement of holding a license laid down in section 4 is fulfilled. The argument advanced by learned counsel in the form in which it has been formulated cannot be accepted, as it is covered by a number of decisions of this Court. They are, firstly, First Appeal No. 423 of 1951, Anant Lal Sah v. Pran Krista Saha, disposed of by a Bench of tills Court to which I was a party, on 7-7-1958 (Pat). An identical question was raised in the suit giving rise to that appeal as well. In that case the amount advanced was a sum of Rs. 10,000/-, whereas the money lender held a license only for Rs. 9,999/-. Thus the advance made by the money lender exceeded the maximum amount permissible to him for lending out the money by one rupee. As I have already stated, in the present case also, curiously enough, the difference between the maximum amount permissible to the creditor under his certificate as money lender and the amount advanced by him actually is also one rupee. I think it unnecessary, therefore, to repeat the reasoning of that judgment and it is sufficient to say that the Court allowed the appeal and passed a decree in favour of the plaintiff for a sum of Rs. 9,999/-, which amounted to decreeing the plaintiff's suit in substance. The ratio of the decision was that Section 4 did not make lending out of money by a money lender, who did not hold any license as a money lender, in itself illegal, but only it debarred a court of law from entertaining a suit by a money lender who was not already registered as such. That section, read with the rule made under the Bihar Money Lenders Act for taking out of a license was construed as limiting the claim of the money lender, who was already registered as a money lender, to be decreed for the amount for which he held a license, because the court had no power to pass a decree for a higher amount. To read Section 4, apart from the relevant Rule 1(c) u/s 27 of the Act of 1938, would amount to ignoring an important restriction introduced under the above rule, laying down the necessity of obtaining a license fixing the maximum amount of loan permissible and being liable to further obligation in regard to the keeping of accounts etc., as required under the Act for regulating money lending transactions and for stopping any loophole for unfair dealing. That decision has been followed in two other decisions of this Court, namely First Appeal No. 65 of

1954, Parsuram Sahu v. Sant Saran Lal dated 31-3-1960 (Pat) and First Appeal No. 120 of 1957, Jamuna Prasad v. Ganga Prasad Sahu dated 18-9-1961 (Pat). These three decisions, which are all Bench Decisions, have made the position clear that where Section 4 of the Money Lenders Act, 1939, does not make the transaction of money lending illegal by itself, it also does not enable a court to pass a decree in favour of the plaintiff-creditor for an amount of loan which exceeds the maximum amount permissible to him to advance in terms of the money lending certificate granted to him. In that view of the matter, a decree could well have been passed in favour of the appellant for the amount as principal, which would debar him from claiming one rupee more, which is the amount of principal advanced under the handnote concerned.

5. Mr. Bindeshri Prasad Sinha appearing on behalf of the respondents, however, has contended that the cases covered by the aforesaid three decisions are distinguishable, inasmuch as in those cases it was not on record that the creditor had entered into any other transaction, apart from the one which was the basis of the suit giving rise to the appeal. In the present case, however, plaintiff's own witness P. W. 2 and the plaintiff himself, who deposed as P. W. 3, admitted that there was another transaction in 1949 in which the plaintiff advanced to one Govind Lal another amount which was the subject-matter of Money Suit No. 3 of 1954. In a case like this where there is evidence on record to show that the money lender has advanced other loans, it will be hit plainly by Rule 1(c) under the Act of 1938 and a decree cannot be passed. In my opinion, however, the distinction sought to be drawn cannot be accepted as valid.

If the principle is once accepted that the law court can pass a decree in favour of the creditor to the extent of the maximum amount allowed under the certificate to a registered money lender and the suit would fail only to the extent of the amount by which the maximum permissible is exceeded in the advance, it comes to be settled that the law Court will not allow itself to be influenced by any consideration with regard to the nature of the money lending transaction carried on by the creditor except to the extent to which he seeks the protection of the Court for enforcing his dues. Even if, therefore, the appellant can be shown to have advanced other loans, that fact by itself will not disqualify him from seeking the protection of the Court in respect of the present transaction, because other loans may be either accommodation loan or those loans might be repaid by the debtors, without compelling the creditor to come to Court by way of a suit. In that event, Section 4 clearly cannot be taken as providing a bar to a suit being entertained by the Court.

I am, therefore, not impressed with the distinction which has been sought to be drawn from the decisions referred to above. To any this, however, is not to be construed as laying down that even where a decree has already been obtained by the creditor in respect of a loan which along with the amount of advance in the suit under trial was outstanding, on the relevant date even then the Court in a subsequent suit would be precluded from taking into consideration the fact that

the assistance of the Court was already availed of by the plaintiff in another suit and a decree obtained. It may very well be that, in that case the judgment and decree of a prior suit may be relevant for deciding whether the subsequent suit could be decreed by another Court and whether it would not amount to a violation of Section 4 of the Act of 1939 read with Rule 1 (c) under the Act of 1938. If, therefore, it could be established, as it has been sought to be contended in this case, that such a situation did arise in regard to the transaction of the present creditor as well, different considerations might arise.

Learned counsel for the respondents accordingly put in an application under Order 41, Rule 27 of the CPC for additional evidence to explain the statement in cross-examination by P. Ws. 2 and 3 that a suit was brought by the plaintiff against Govind Lal in respect of a loan of 1949. Learned counsel for the appellants filed a counter-affidavit seeking the permission of the Court that he might put in the judgment of that suit to show that that was based upon a renewed handnote, the amount of which was originally advanced in 1949 but was repaid by a subsequent handnote of 1952, when the appellant held a licence for Rs. 50,000. That is Ex. 4/a and that license was obtained in 1950. Money Suit No. 3 was brought in 1954 and, as such, the renewed handnote would be covered, by the certificate of 1950.

In support of the contention that a renewed handnote is to be treated as an independent transaction, reliance was placed upon certain decisions and learned counsel on behalf of the other side endeavoured to meet them with reference to other decisions in support of his contention that even when there is a renewal of a handnote, it would not completely wipe out the original transaction which must be taken into account in determining whether the loan was outstanding at the time when the amount was advanced in respect of which a suit has been brought.

If we had allowed the application put in by learned counsel on behalf of the respondents for additional evidence and admitted the certified copy of the decree of that suit, it might be equally reasonable for us to admit the judgment of that suit as well and then the question might have been gone into in more precise form as to what would be the effect of a renewed handnote which has come into existence on a subsequent date and whether it would amount to wiping out of the previous transaction which is the basis of the renewed transaction. Learned counsel for the respondents, however, has submitted that the requirements of Order 41, Rule 27 of the CPC is rather rigorous and before additional evidence can be admitted, the terms of Rule 27 must be strictly fulfilled.

Clause (b) of Rule 27, as amended by this Court, lays down that a party may produce additional evidence in the appellate Court, if he can satisfy that Court that he was not aware of the existence of the evidence sought to be brought on record. In the present case, from the very suggestion made to the plaintiff's witnesses, it is clear that the defendant knew that there was a suit pending in respect of the loan advanced by the appellant to Govind Lal. In terms of Clause (b) therefore, he will not be permitted to bring on record the decree of that suit.

Learned counsel, however, contended that his application should be considered under Clause (c), which is in the Code as Clause (b), and which is to the effect that where the Court itself requires a document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the appellate Court may allow such evidence or document to be produced or witness to be examined. Learned counsel for the appellant urged, however, in reply that where there is a clear case of knowledge of the existence of the document on the part of the party seeking to lead additional evidence during the pendency of the suit at the trial stage, it will be a case of gross laches and the Court would not exercise its discretion even under Clause (c) of Rule 27 in conjunction with Clause (b) of that rule. In my opinion, in view of the clear suggestion made to the plaintiff's witnesses, it will not be a fit case to allow the certified copy of the decree to be brought on the record as additional evidence in this appeal. That being so, the prayer of learned counsel for the appellants for producing the copy of the judgment which would show that the cause of action of that suit was of a period subsequent to the loan advanced in the present case not affecting the maximum amount under the license also cannot be acceded to. Learned counsel for the appellants is not serious to have it brought on the record, if the prayer of the respondents for bringing on record the decree of the money suit is not allowed. Both the prayers are accordingly rejected. This leads us to the position that there is nothing on the record to show that the plaintiff obtained any decree in any law Court in any suit as a moneylender in respect of an amount which was outstanding at the time the present loan was advanced, both of which might have exceeded the maximum amount permissible under the certificate granted to him. The result is that this appeal is covered by the three decisions which have been referred to above and a decree must be passed in favour of the appellant for the amount covered by the license, that is to say, for a sum of Rs. 4,999 together with interest up to the date of the institution of the suit. The appeal is, therefore, allowed, the judgment of the learned single Judge is set aside and the suit is decreed in the manner indicated above. The plaintiff, however, shall not be entitled to any pendente lite interest. If the defendants would pay up the decretal dues within a period of one month from this date, they shall not be liable to pay any interest for this period. In case the decretal dues are not paid within a period of one month from today, the plaintiff shall be entitled to future interest at the rate of 6 per cent per annum up to the date of realisation.

G.N. Prasad, J.

6. I agree.