(1965) 07 BOM CK 0014

In the Bombay High Court

Case No : First Appeal No. 87 of 1959

Hajarimal Girdharilalji Shop APPELLANT

Vs

Harinarayan Sheonarayan Maheshwari RESPONDENT

Date of Decision : 01-07-1965

Acts Referred:
Contract Act, 1872 — Section 65

Citation : (1965) 67 BOMLR 816 : (1965) MhLj 797

Hon'ble Judges : H.K. Chainani, C.J;Tambe, J;Abhyankar, J

Bench : Full Bench

Judgement

H.K. Chainani, C.J.—The question, which has been referred to the Full Bench, has been formulated as under:-

Whether a suit for the recovery of a loan advanced by a moneylender is liable to be dismissed, because the moneylender was not registered u/s 11-B of the C.P. and Berar Moneylenders Act, 1934 (No. XIII of 1034) on the date of the transaction?

2. The facts of the appeal, which has given rise to this reference, are that the appellant-plaintiff is a money-lender. He advanced two loans of Rs. 2,000 and Rs. 4,500 to the defendant on April 20, 1952, and June 29, 1952, respectively. On these dates he did not hold a valid registration certificate. These promissory notes were renewed on April 7, 1955, on which date the defendant executed a fresh promissory note for Rs. 8,500 which represented the principal of the original two promissory notes and the interest thereon. In 1958, the plaintiff instituted a suit to recover the amount due from the defendant on the promissory note dated April 7, 1955. This suit was dismissed following the decision of this Court in Wasudeo Bhairulal Agarwal Vs. Ramchandra Rao Mahadeo Rao Joshi, . In that case, it was held that a suit to recover money advanced by a money-lender as defined in the C.P. and Berar Moneylenders Act, 1934 (hereinafter referred to as the Act) and who did not hold a registration certificate on the date of the transaction, cannot be instituted. Against that

decision, the plaintiff filed an appeal. When the appeal came up for hearing, reliance was placed on behalf of the appellant on the decision of the Nagpur High Court in Patiram v. Baliram [1953] Nag. 997. In that case, the Nagpur High Court had held that Section 11-F of the Money-lenders Act applies to the business of money-lending and not to an individual transaction of lending money, that the individual transaction of money-lending made by a moneylender, who has not obtained a registration certificate, is not made invalid and that the only obstacle created in his way is that he cannot obtain a decree on his loan unless he possesses a valid registration certificate on the date on which a decree is to be passed. In view of these two conflicting decisions, the Division Bench decided to refer the matter to a larger Bench.

3. Section 11-A of the Act provides that every Sub-Registrar shall maintain a register of money-lenders. Sub-section (i) of Section 11-B states that every person, who carries on or intends to carry on the business of money-lending, shall get himself registered by an application made to the Sub-Registrar of any sub-district of the district or any one of the districts in which he carries or intends to carry on such business. Section 11-B provides that the registration certificate granted u/s 11-B shall not entitle the holder thereof to carry on the business of money-lending in any district other than the district or districts for which such certificate has been granted. Sub-section (1) of Section 11-F states that no person shall carry on the business of money-lending in any district unless he holds a valid registration certificate in respect of that district. Sub-section (2) of this section states that whoever contravenes the provisions of Sub-section (i) shall be punishable with the fine specified in the section. Section 11-H, and which is the section which is to be construed, is in the following terms :-

11-H. No suit for the recovery of a loan advanced by a moneylender shall proceed in a civil court until the court is satisfied that he holds a valid registration certificate or that he is not required to have a registration certificate by reason of the fact that he does not carry on the business of money-lending in any of the districts of Madhya Pradesh.

Provided that this section shall not apply to a suit instituted before-the 1st October 1940.

4. The language used in Section 11-H is very significant. The section does not say that no suit shall be instituted or entertained. What it states is that no suit shall proceed. The section does not therefore bar a suit for the recovery of a loan advanced by a money-lender, who did not hold a valid registration certificate. A suit can lie, but the Court is required not to proceed with the suit, that is, to hold any proceeding in the suit until it is satisfied that the plaintiff money-lender holds a valid registration certificate. There is also no total prohibition on the Court from proceeding with the suit. The prohibition is to operate "until" the Court is satisfied about the possession of a valid certificate by the plaintiff. The other important word to be noted is "holds". The word is used in the present tense. It suggests that the money-lender must possess a registration certificate at the

time when the Court proposes to proceed with the suit. If at that time he does not possess a valid registration certificate the Court cannot proceed with the suit.

5. It has been urged that as u/s 11-F a money-lender cannot carry on money-lending business without a valid registration certificate, the words "holds a valid registration certificate" in Section 11-H imply that the certificate should have been held on the date of the transaction. The material word used however is "holds" and not "held". The section does not say that the money-lender should have held a valid registration certificate on the date of the transaction. The word "holds" considered along with the words "shall proceed" on the other hand indicate that the requirement about the certificate is to be satisfied at the time when the Court intends to proceed with the suit.

6. Section 11-H does not also lay down that the suit shall be dismissed if the certificate is not produced. It only prohibits a Court from proceeding with the suit until it is satisfied as stated in the section. What the section, therefore, contemplates is that if after the suit has been instituted, the Court finds that the plaintiff moneylender does not hold a valid registration certificate, it shall stay the suit for a reasonable time until a valid registration certificate is produced. If no such certificate is produced thereafter, the Court will not pass a decree in the plaintiff''s favour.

7. A plain reading of the section, therefore, makes it clear that a suit cannot be dismissed only on the ground that the plaintiff did not possess a valid registration certificate on the date of the transaction.

8. The principal reason for the contrary view taken in Wasudeo Bhairulal v. Ram-chandra, is that as Section 11-F prohibits a money-lender from carrying on the business of money-lending without a valid registration certificate and also provides a penalty for the contravention of this provision, a suit on a money-lending transaction entered into by an unregistered money-lender cannot be maintained. With respect, it may be pointed out that the Legislature itself has not barred a civil suit in respect of such a transaction. The only obstacle which it has placed in the way of a plaintiff in such a case is that the suit shall not proceed until a valid registration certificate has been produced. The Legislature has also in Sub-section (2) of Section 11-F specified the penalty for contravention of the provisions of Sub-section (1) of Section 11-F, that is, for carrying on money-lending business without a certificate. It has not prescribed any additional penalty such as that a suit to recover a loan advanced by an unregistered money-lender shall not lie or shall be dismissed. It is not open to a Court to subject a person to any penalty other than what the Legislature has prescribed.

9. Reliance has been placed in the above judgment on Mohd. Salem v. Umaji A.I.R [l955] Hyd. 113. in which a Full Bench of the Hyderabad High Court held that a suit should be dismissed if the money-lender did not possess a licence on the date of the transaction. It was observed that the object of the enactment was

to serve a public purpose and the mischief it sought to secure was to protect borrowers from unscrupulous and usurious money-lenders by prohibiting them from lending monies without obtaining licences on pain of imprisonment as well as by empowering Courts to dismiss suits of such money-lenders. Section 9(2) of the Hyderabad Money-lenders Act provides that if it is proved that the plaintiff is a money-lender as defined in Sub-section (7) of Section 2, but does not hold a licence granted u/s 3, the Court shall dismiss his suit. The object of the C.P. & Berar Act is also the same, to protect borrowers from unscrupulous money-lenders, but there is no provision in this Act empowering the Court to dismiss a suit on the ground that the money-lender did not possess a registration certificate. The wording of Section 11-H is materially different.

10. It has been urged that a transaction entered into by a money-lender in contravention of the provisions of Section 11-F is void and opposed to public policy. It is not necessary for us to decide this question in this reference. Assuming that the transaction is void, the plaintiff may be able to obtain relief u/s 65 of the Contract Act. It will be open to the respondent to urge this point at the hearing of the appeal.

11. In Janki Bai v. Ratan Melu A.I.R [1902] M.P. 117. a Full Bench of the Madhya Pradesh High Court has taken the same view as we are inclined to take. It was held in that case that if a money-lender does not have, and cannot produce a registration certificate covering the date on which he advanced a loan, his suit for recovery of that loan is, for that reason alone, not liable to be dismissed, and that it will be sufficient compliance of Section 11-H if, during the pendency of the suit he produces a registration certificate which is valid at the time of its production.

12. In our opinion, therefore, Wasudeo Bhairulal v. Ramchandra was not correctly-decided. Our reply to the question referred to the Full Bench will, therefore, be in the negative. The appeal may now be placed before a Division Bench for further orders.

