
(2013) 03 BOM CK 0086

In the Bombay High Court

Case No : Criminal Application No. 1150 of 2007

Hari, Yogesh and Sakharam

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 10, 13A, 13B, 13B(1), 18

Citation : (2013) 03 BOM CK 0086

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : Hemant Surve, for the Appellant; V.G. Shelke, APP for Resp. Nos. 1 to 4 and 6 to 9 and Mr. S.V. Gundre, h/for Mr. V.D. Gunale, for the Respondent

Final Decision : Allowed

Judgement

K.U. Chandiwal, J.—Heard extensively. Rule was issued on 20th June, 2007. By these applications, the applicants have questioned lodging of F.I.R. vide Cr. Nos. 35/2006; 36/2006; and 34/2006, all dated 28.12.2006 before Taluka police station, Nandurbar. Shri Ratan Sajan Patil had executed sale-deed dated 17.6.2004 in favour of the applicant. Pursuant thereto, mutation entries were effected being entry Nos. 475, 476, 477 and 479. The respondent No. 5 belatedly moved the Respondent No. 3, making allegation that the applicant has indulged in money-lending and that the sale-deed, executed by his grand-father, was, in fact, mortgage and not an outright sale. The purpose of sale-deed was, the same would be a conveyance in favour of grand-father of Respondent no. 5. Respondent No. 3 issued a show cause notice to the applicant, asking to reply as to why action under the provisions of The Bombay Money-Lenders Act, 1946 (for short, the Act), should not be initiated. The applicant has denied of any transaction in the form of and nature alleged by Respondent no. 5. Respondent no. 3, after reply, did not hold any inquiry with the applicant. However, surreptitiously, inquiry report dated 11.10.2006 of Respondent no. 3 was forwarded to the applicant with another show-cause notice dated 13.10.2006. It

was a composite inquiry conducted in all the three complaint applications. Thereafter, Respondent no. 3 conveyed of framing a charge against the applicant under the said Act and he held that the applicant has indulged in unauthorized money-lending activities. This view of Respondent no. 3 was questioned before the learned Divisional Joint Registrar, Co-operative Societies, Nasik. It was informed that there was no enquiry carried by Respondent no. 3. The Respondent no. 3, in spite of pending such representation before Respondent no. 2, did not wait for its result and ultimately lodged F.I.R. on 28.12.2006 with police, alleged the offences under Sections 32B and 33(1) of the said Act. The conduct of Respondent no. 3 was considered by Respondent no. 2 and intervened in the matter directed Departmental Enquiry against Respondent no. 3 for such personal indulges. However, no fruitful event was the outcome. The opinion of additional Public Prosecutor of Nandurbar dated 10.11.2006 though illustrated of filing a complaint against the applicant, however, by letter dated 16.12.2006, opinion was withdrawn as the matter was subjudice.

2. Learned Counsel rightly said, there was no authority vested in Respondent no. 3 to cancel the registered document of conveyance. It was not within the province of provisions of the said Act and it was alleged to be an excessive exercise of powers by Respondent no. 3.

3. Section 13A of the said Act deals as under:

[13A Power of authorized officer to require production of records or document,-

For the purpose of verifying whether the business of money-lending is carried on in accordance with the provisions of this Act any Registrar, Assistant Registrar or any other officer authorized by the [State] Government in this behalf may require any money-lender [or any person in respect of whom the Registrar, Assistant Registrar or the officer so authorized has reason to believe that he is carrying on the business of money-lending in the State] to produce any record or document in his possession which in his opinion is relevant for the purpose and thereupon such moneylender [or person] shall produce such record or document. The Registrar, Assistant Registrar or officer, so authorized may after reasonable notice at any reasonable time enter and search without warrant any premises] where he believes such record or documents to be [and inspect such record or document] and may ask any question necessary for interpreting or verifying such record.]

Section 13B(1) reads thus:

13B(1) If upon the inspection of records and documents made u/s 13A, the inspecting officer is satisfied that the money-lender is in possession of property pledged to him by a debtor as security for the loan advanced by the moneylender in the course of his business of money-lending without a valid license, the inspecting officer shall required the money-lender to deliver forthwith the possession of such property to him.

4. The powers under the said Act is purely an administrative character and for the purposes of verification. It does not provide for any adjudication. Section 13B of the said Act comes into operation after exercise of powers u/s 13A and hence even u/s 13B, no adjudication is permissible. The jurisdiction to Respondent no. 3 is with a limited scope.

5. The words "document" used in Section 13A or "pledge" used in section 13B of the said Act, has strictly a distinct meaning. It will not be embracing a situation of mortgage of immovable property. Section 2(10A) of the said Act also inform legislative intent in respect of the term "pledge" as it reads "pawn-broker" means a moneylender who, in ordinary course of his business, advances a loan and takes goods in pawn as security for payment of such loan."

6. Section 18 of the said Act uses words, "mortgage", "pledge" wherever it was required. The word "assignment" used therein clearly envisages transfer of property. Assignment means, "transfer of claim, right or property to another". Section 43 prohibits transfer of property.

7. Thus the order or action of FIR by Respondent no. 3 for taking over properties of the applicants by effect of Section 13A or 13B of the said act, is certainly beyond the scope of powers as these sections strictly deal with movable properties. The redressal in respect of immovable property has to be necessarily in civil court.

Section 10 of the Act speaks as under:

10(1) No court shall pass a decree in favour of a money-lender in any suit to which this Act applies including such suit pending in the court before the commencement of the Bombay Money-Lenders (Amendment) Act 1975, unless the court is satisfied that at the time when the loan or any part thereof, to which the suit relates was advanced, the money-lender held a valid license, and if the Court is satisfied that the money-lender did not hold a valid licence, it shall dismiss the suit.

(5) Nothing in this section shall affect-

(a) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force;

(b) the powers of a Court of Wards or an Official Assignee, a receiver, an administrator or a court under the provisions of the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920 or any other law in force corresponding to that Act, or of a liquidator under the Companies Act, 1956, to realise the property of a money-lender.

8. Section 29 of the said Act, provides thus:

29. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard ex parte or otherwise-

- (a) reopen any transaction, or any account already taken between the parties;
- (b) take an account between the parties;
- (c) reduce the amount charged to the debtor in respect of any excessive interest;
- (d) If on taking accounts it is found that the money-lender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount: Provided that in the exercise of these powers, the Court shall not-
- (i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations, which have been entered into by the parties or any person through whom they claim at a date more than six years from the date of the suit;
- (ii) do anything which affects any decree of a Court.

Explanation-For the purpose of this section "excessive interest" means interest at a rate which contravenes any of the provisions of section 25.

9. Thus, Section 10 requires a Court not to decree a suit of money-lending and to dismiss it, if he has no valid license. Section 29 permits the Court to open closed transaction. Thus, the money-lending Act has not taken away proceedings before civil court.

10. The F.I.R. display that inquiry was caused u/s 13A of the Act and thereafter, the F.I.R. is lodged u/s 32B and 33(1) of the said Act.

11. Sections 32B and 33(1) of the Act, read as under:

32B Whoever,-

- (a) obtains a licence in the name which is not his true name or carries on the business of money-lending under the licence so obtained, or
- (b) carries on the business of money-lending at any place without holding a valid licence authorising him to carry on such business at such place, or
- (c) enters into any agreement in the course of business of money-lending without a valid licence, or under a licence obtained in the name which is not his true name, shall, on conviction, be punished,-
 - (i) for the first offence, with imprisonment of either description which may extend to one year or with fine which may extend to rupees one thousand and five hundred or with both, and
 - (ii) for the second or subsequent offence, in addition to, or in lieu of, the penalty specified in clause (i), with imprisonment which shall not be less than two years, where such person is not a company, and with fine which shall not be less than rupees five thousand, where such person is a company.

33(1) Whoever molests, or abets the molestation of, a debtor for the recovery of

a debt due by him to a creditor shall, on conviction, be punishable with imprisonment of either description which may extend to three months or with fine which may extend to Rs. 500 or with both.

12. No case of infraction of Sections 32B or Section 33(1) of the said Act, is accelerated as there is no molestation of any so-called debtor for recovery of debt by the accused/applicants. There was no agreement in the course of business of money-lending without a valid licence. The registered document of sale-deed could not be stated wishfully to the detriment of the bonafide purchaser. It is also clear, Respondent no. 3 is not an authority constituted as an alternate forum to decide the question about title of immovable properties. Respondent no. 3 could not, with all said and done, cause an ex parte inquiry, making a show of inquiry and holding the applicants guilty. Respondent no. 3 could not throw away the applicant in respect of powers and rights vested in him by virtue of the registered sale-deeds. This legal position is crystallized in Writ petition No. 599/2006 and Ors. (group matters) decided by this Court (Nagpur Bench) on 13th October, 2006. The First Information Reports, in question, therefore, call for interference. The Criminal Applications are allowed as above. Rule made absolute in aforesaid terms with costs.