
(1980) 04 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Revision No. 82/78

Kanhaiya Lal

APPELLANT

Vs

Shri Lal and Others

RESPONDENT

Date of Decision : 24-04-1980

Acts Referred:

Rajasthan Money Lenders Act, 1963 — Section 22, 23

Citation : (1980) RLW 301 : (1980) WLN 469

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—The only point which is involved in this revision petition is, as to whether in the facts to be presently stated, amendment in Section 26(b) introduced by the Rajasthan Money Lenders (Amendment) Act, 1976 (hereinafter referred to as the Amending Act) will apply to pending suits

2. One Sua, who is now represented by his legal heirs, the non-petitioners, took a loan of Rs. 1130/ from the plaintiff-petitioner on June 2, 1967, and executed a Khata in favour of the plaintiff-agreeing to pay interest at Re. 1/- percent per month. The plaintiff filed a suit against the said Sua for recovery of Rs. 1480/- within three years of June 2, 1967. Sua contested the suit on the ground that he did not take any loan from the plaintiff, nor did he execute a Khata. He also raised legal objections that the plaintiff has not obtained a licence under the Rajasthan Money Lenders Act, 1963 (Act No. 1 of 1964) (hereinafter referred to as the Act and, therefore, the suit is not maintainable, and that the plaintiff has not kept the account books in accordance with the provisions of Sections 22 and 23 of the Act, nor the plaintiff has sent a copy of the account to the Registrar appointed under the provisions of the Act. The learned Munsif framed necessary issues. When the suit was pending, Sections 11 and 26(b) of the Act were substituted by the Rajasthan Money Lenders (Amendment) Ordinance, 1975 (Rajasthan Ordinance No. 14 of 1975), which was later on replaced by the

Amending Act. The learned Munsif dismissed the suit of the plaintiff on March 13, 1976 on the ground that the provisions of Sections 22 and 23 of the Act have not been followed, The plaintiff preferred on appeal before the learned District Judge, Sawai Madhopur, who, vide his judgment upheld the view of the learned Munsif and accepted the appeal in part to the extent that the plaintiff shall pay only half of the costs incurred by the non-petitioners.

3. It is contended by the learned Advocate for the petitioner that the Act is a substantive law, and the rights of the parties to the suit were to be decided according to law, as it existed when the action was given, and, therefore, the amendment introduced in Section 26(b) of the Act will not apply to pending proceedings. It is prospective and not retrospective. It cannot be disputed that the Act is a substantive law, and it is settled that in general when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to law, as it existed when the action began unless the new statute shows a clear intention to vary such rights. In the words of Section Rule Das, Chief Justice, in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, "The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed" A new law ought to be prospective, not retrospective in its operation, but it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which expressly or by clear intendment takes in even pending matters, the Court must have regard to an intention so expressed and give effect to it even in pending proceedings. Maxwell, in his book on the "Interpretation of Statutes (12th Edn.) dealing with the subject of retrospective operation of Statutes at page 215 says, "It is a fundamental rule of English, law that no Statute shall be construed to have a retropective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication "In *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, dealing with construction of the Act, it was observed, "The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered word had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all." The above view expressed in *Shanrao's case (Supra)* was approved in *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, it was observed, "But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done, if such retrospective operation is given by the amending Act either expressly or by necessary implication.

4. In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra*

Yograj Sinha, , it has been held, "while it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication, many Acts, though prospective in form, have been given retrospective operation, if the intention of the Legislature is apparent. This is more so, when Acts are passed to protect the public against social evil or abuse (See Craies on Statute Law 5th Edn. page 364).

5. It is, therefore, to be seen as to whether the amendment in Section 26(b) of the Act introduced by the amending Act gives retrospective operation to its provisions by necessary implication? Before the amendment of Section 26(b) of the Act, upon the decision of the Court that the money lender has not complied with the provisions of Section 22 and Section 23 of the Act, the Court could not dismiss the suit and could only disallow the whole or any part of interest found due depending on as to whether the provisions have not been complied with regard to the whole of the claim or part of the claim. But the amending Act substituted for Clause (b), the following clause:

Clause 26(b).-If the Court finds that the provisions of Sections 22 and 23 have not been complied with by the money lender in respect of the whole or any part of the claim, it shall dismiss (i) the whole suit with the costs where such contravention has been in respect of the entire claim in the suit (ii) so much of the claim with costs proportionate thereto in respect of which the said provisions have not been complied with by the money lender.

To my mind, the word "suit" in amended Section 26(b) of the Act embraces within its ambit even the pending suits. Section 26(b) starts with a non-obstante clause. The contention of the learned Advocate to the contrary, to my mind, has no force because the necessary intention of the Legislature to give retrospective effect to Section 26(b) of the Act can also be gathered from the fact that along with substitution of Section 26(b) by the amending Act, Section 11 was also substituted under which the Court was to dismiss the suit of the money lender, if it was satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money lender did not hold a valid licence. But, as per saving clause, Section 11 of the Act as substituted by the amending Act was not to affect suits pending in the Court on the date of commencement of the Rajasthan Money Lenders (Amendment) Ordinance, 1975, which were to be disposed of according to law existing immediately before the commencement of the Ordinance. There is no such saving clause in Section 26(b) of the Act as substituted by the amending Act, under which the Court has no option but to dismiss the suit, if the provisions of Sections 22 and 23 of the Act were not complied with. While looking for the Legislative intent the "purpose and object" or the "reasons and spirit" pervading through the Statute has also to be looked into. The main object of the Act is to obviate the hardships to which the borrowers were subjected, and the purpose of the Act is not only to control the Money Lenders, but also to control and regularise money lending transactions in the State. A perusal of the various provisions of the Act will show that u/s 5 of

the Act no money lender can carry on or continue to carry business of money lending except in accordance with the terms and conditions of a licence, after the expiration of six months from the date when the Act is brought into force. u/s 22 of the Act, a duty has been cast on money lenders to keep accounts and furnish copies of the same to the debtor. u/s 23, the money lender is required to deliver statements of accounts and copies thereof duly signed by him to the debtor u/s 26(a) before deciding the claim on merits, the Court has to frame and decide the issue, whether the money lender has complied with Sections 22 and 23 of the Act. u/s 40, non-compliance with or acts in contravention of any provision contained in Sections 5, 22 and 23 of the Act have been made punishable. It can, therefore, be said that keeping in view the "purpose and object" or the "reasons and spirit" of the Act, the provisions of Section 26(b) of the Act, as they stand after the amendment by the amending Act of 1976 will apply to the pending suits also, and if Sections 22 and 23 have not been complied with, then the Court has to dismiss the suit, as the word "suit" as used in amended Section 26(b) embraces within it the pending suits.

6. Having arrived at a finding that the amended provisions of Section 26(b) will apply to pending suit the revision stands dismissed. But, in the facts and circumstances of this case, the parties are left to bear their own costs.