
(1961) 07 MP CK 0034
In the Madhya Pradesh High Court
Case No : S.A. No. 386 of 1959

Laxminarayan

APPELLANT

Vs

Deo Radba Ballabh

RESPONDENT

Date of Decision : 14-07-1961

Acts Referred:

Central Provinces and Berar Money Lenders Act, 1934 — Section 2(vii)(b)

Citation : (1961) JLJ 1162

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : R.S. Dabir, for the Appellant; B.L. Seth, for the Respondent

Final Decision : Allowed

Judgement

Shivdayal, J.—This second appeal arises out of a suit instituted by a registered public Trust against the appellant for the recovery of Rs. 1123-3-0. It was alleged in the plaint that the defendant was one of Trustees of the plaintiff Trust. In spite of a resolution of the Trust that no trustee was to enter into any personal transaction with the Trust funds without a specific sanction of the Board of Trustees, the defendant entered into two transactions with the collusion of Brij Mohandas Maheshwari, another Secretary of the Trust. On September 6, 1949, the defendant borrowed Rs. 2,725/- and pledged a gold belt (Kardhoni) weighing 291/4 tolas. Only Rs. 300-were paid towards this loan. Then on September 12, 1952, the defendant borrowed a sum of Rs. 3,173-for discharging the previous loan (Rs 2,725-as principal and Rs. 448-as interest). He again pledged the ornament. It was alleged that the rate of gold was going down and the belt was hardly a security for the amount borrowed. Later on notices were given to the defendant and eventually the pledged article was sold for Rs. 2,451. The suit was for the recovery of the balance due i. e. Rs. 959-7-6 together with Rs. 163-11-6 by way of interest, total Rs. 1123-3-0. The main pleas in the defence were that the money was borrowed really for one Kishen Chand to whom the belt belonged; that the suit was barred by time; that the plaintiff was a money-lender

and since it did not comply with the provisions of the Money Lenders Act, the suit was not maintainable. The trial Judge passed a decree in favour of the plaintiff for the entire claim, together with interest and costs of the suit. The defendant's appeal has been dismissed by the First Additional District Judge, Saugor.

2. The only question which I am called upon to decide is whether the provisions of the C. P. & Berar Money Lenders Act are applicable to the suit claimed. The learned trial Judge held that the provisions were not applicable. The first appellate Court found that the plaintiff Trust was exempt from the application of the Act.

3. Shri Dabir contends that the saving clause contained in Section 2 (vii) (b) of the Act does not apply to a trust. In my opinion this contention must be accepted. The exemption provided in this clause is only for a society or an association and it must be registered under the Societies Registration Act or any other enactment which is analogous to the last mentioned Act. The words "any other enactment" must be read ejusdem generis. Moreover, a trust is neither a society nor an association. As such a Trust although registered under the Public Trusts Act, is not exempt from the operation of Section 2 (vii) (b) of the C.P. & Berar Money Lenders Act.

4. It is now to be seen whether the suit transactions are loans within the meaning of the Act. Section 2 (vii) of the Act defines "loan" as follows:-

Loan means an actual advance made within twelve years from the date of the loan transaction whether of money or in kind at interest and shall include any transaction which the Court finds to be in substance a loan.

The plaintiff is a Trust. The defendant himself one of the trustees on September 6, 1949, when he drew Rs- 2,725-and also on September 12, 1952, when he took out Rs. 6,173-from the Trust funds. It was averred in the plaint that in the case of the plaintiff Trust a trustee was forbidden to enter into any personal transaction out of the Trust funds without a prior sanction of the Board of Trustees. This was not traversed in the written statement. That being so, the so called borrowing was in the eye of law mis-appropriation of Trust money by fraud and collusion. It is quite clear to me that the expression "loan" as defined in the Act postulates a conscious and positive act of the plaintiff in make an "advance" of money. In the present case, the plaintiff claims return of money wrongfully taken away by the defendant, a trustee himself. In substance, therefore, there was no advance made and it was not a loan. That one person took away another's money is not the same thing as to say that the latter advanced the money to the former. But it is open to the latter subsequently to treat it as a loan. An act without authority can be subsequently validated by him who has the option to repudiate it. In the present case, the Board of Trustees passed a resolution (No. 8 dated August 8, 1953) as alleged in paragraph 4 of the plaint, according to which:-

Notice dekar grivi ke zewar bech diye jaye aur nuqsani ki karrwai ki jaye

Although the resolution is not on record, the notice which was issued in pursuance of the resolution was filed (Ex. P. 9 dated 24-8-53). It reads thus:-

Apne upar likhe trust se rupaye 3177- 12-0 qarza ba zariye sona girvi rakhkar qarza liya tha us sone ka bhav gir gaya hai aur ab in chizon ko rakhne men hamare upar likhesaman ko nuksan ho raha hai ki ab apko yeh notice miyad 10 din ka diya jata hai ki ap andar miyad notice ke apna zewar hamare saman ka kul rupaya maya sood ke ada kar utha len varaa apka zewar 16-9-53 ko Sarafe Bazar men vaqt 2 baje din ke bech diya jawega va jis qudra nuqsani zewar bechane men hogi uski nalish ap par ki jawegi.

The word "Qarza" is significant. The plaintiff actually sold the pledged goods and this suit is for the recovery of the outstanding balance. Obviously the plaintiff acted u/s 176 of the Contract Act. In this way the plaintiff Trust treated the transaction as a loan and ratified it. The provisions of the Money Lenders Act are, therefore, applicable to the suit transaction.

5. Learned counsel for the defendant contends that the suit must be dismissed inasmuch as the plaintiff Trust has not filed a certificate of registration under the Money Lenders Act, This is a new plea which was not raised before. In the written statement the only grievance was that the plaintiff did not further annual accounts as required under the Act, which disentitled him to interest and costs. Whether the plaintiff did not get itself registered and obtained a certificate under the Act is a question of fact and it cannot be raised for the first time in the second appeal. That plea must, therefore, be ignored.

6. As to the question whether the plaintiff in compliance with the provisions of the Money Lenders Act furnished accounts to the defendant or not, Shri Seth, learned counsel, for the plaintiff, invites my attention to certain statements of account which are included in the paper book and contends that the plaintiff did not commit any default. There is no finding recorded about this dispute by the first Appellate Court. The case must, therefore, go back to it. Shri Seth's contention that the defendant being himself a trustee could have furnished the accounts to himself, that he could take no advantage out of his own wrong and that he was estopped by his conduct, are again questions which may be pressed before the lower appellate Court.

7. In the result this appeal is partly allowed. The decree passed by the Courts below in favour of the plaintiff is maintained to the extent of Rs. 722/- (the principal amount, i. e. Rs. 3,173/ minus Rs.2,451/-). The case shall now go back to the first Appellate Court to determine whether the plaintiff is entitled to interest and costs in the light of the observations made above. The appellant shall pay to the plaintiff proportionate costs incurred by it in all the Courts on Rs. 722/-. The costs hereafter incurred in all the Courts on Rs. 401-3-0 proportionately shall abide the result of the first appeal after this remand.