(1995) 03 KL CK 0033

In the High Court Of Kerala

Case No : O.P. No''s. 10344 of 1989-F and 6856 of 1989-N

Link Hire-Purchase and Leasing Co. (Pvt.) Ltd. and Premier Kuries and Loans (Private) Ltd. — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Citation : (2001) 103 CompCas 941

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : S.V. Balakrishna Iyer, for the petitioner in O.P. No. 6856 of 1989-N and K. Jayakumar, for the petitioner in O.P. No. 10344 of 1989-F, for the Appellant; A.A. Mohammed Nazir, for the Respondent

Final Decision : Dismissed

Judgement

K.K Usha, J.—The petitioners are private limited companies admittedly carrying on the business of money lending. But it is their contention that they would not come within the definition of "money lender" under the Kerala Money-lenders Act, 1958, as amended. Therefore, according to the petitioners, they are not liable to take any licence as provided under the Act nor are they bound by other provisions of the Act. They seek a declaration that the Kerala Money-lenders Act, 1958 does not apply to the petitioners as they are companies incorporated under the Companies Act. They also seek a direction to respondents Nos. 1 to 4 not to enforce the provisions of the Kerala Money-lenders Act against them.

2. The term "money-lender" is defined u/s 2(7) of the Kerala Money-lenders Act, 1958, as amended by Act 16 of 1987 as follows :

''2. (7) "money-lender" means a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker, but does not include-

(a) a bank or a co-operative society ; or

(b) the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956); or

(bb) the Industrial Credit and Investment Corporation of India Limited incorporated under the Indian Companies Act, 1913 (7 of 1913) ;

(c) the Industrial Finance Corporation established u/s 3 of the Industrial Finance Corporation Act, 1948 (Central Act 15 of 1948); or ...

(e) the State Finance Corporation established u/s 3 of the State Financial Corporations Act, 1951 (Central Act 63 of 1951) ; or

(f) any institution established by or under an Act of Parliament or the Legislature of a State, which grants any loan or advance in pursuance of the provisions of that Act ; or

(g) any other institution in the public sector, whether incorporated or not exempted by the Government by notification.

Explanation I.--Where a person, who carries on in the State of Kerala the business of advancing and realising loans is resident outside the State, the agent of such person resident in the State shall be deemed to be the money lender in respect of that business for the purpose of this Act.

Explanation II.--For the purpose of this clause, Clause (7A), proviso to Sub-section (1) of Section 3, Clause (a) of Sub-section (3) of Section 10, (Section 16B) and Section 17, the word "person" shall include "a firm or a joint family" ;''

3. The petitioners would contend that the word "person" referred to in the section can apply only to a natural person and not to a company. The wording of the section would not give any indication to include a company in the term "person" referred therein. Reference is also made by the petitioners to the provisions contained u/s 3 in support of their contention that, a company will not come within the definition of moneylender. Section 3 makes it mandatory for a money-lender to obtain licence. The relevant portions of Section 3 read as follows :

"3. Money-lender to obtain licence.--(1) From the date on which the provisions of this Act are brought into force in any area, no person, firm or joint family (or unincorporated association of individuals shall commence or) carry on or continue business as a money-lender at any place in such area without a licence obtained under this Act or in contravention of the terms thereof:

Provided that nothing in this section shall be deemed to prohibit a person who has applied for a licence to carry on or to continue business as a money-lender pending orders on his application. . . .

(3) (a) where a money-lender is a registered firm the licence shall be obtained in the firm''s name.

(b) where a money-lender is an undivided joint family, the licence shall be obtained in the name of the manager or the karanavan or the yajaman, as the case may be, described as such in the licence.

(c) Where a money-lender is any other association of individuals, not required to be registered under the Indian Companies Act, 1956 (Central Act 1 of 1956), a separate licence shall be obtained by each such individual in his name describing himself as a member of the association :

Provided that nothing contained in this sub-section shall affect the operation of Section 69 of the Indian Partnership Act, 1932 (Central Act IX of 1932)."

4. It is contended by the petitioners that if the intention of the Legislature was to include company also within the term "person", it would have made specific provisions under Sub-section (3) as to how and in whose name licence has to be obtained by the company, which is doing money lending business. Under Sub-section (3) such provisions are made in the case of firm, undivided joint family and any other association of individuals not required to be registered under the Indian Companies Act. The absence of a provision in the case of companies, according to the petitioners, would make it clear that the Legislature had not intended to include a company in the definition of money-lender u/s 2(7).

5. The petitioners have a further case that when the Kerala Money-lenders Act is intended to apply all deposits taken by money-lenders and loans advanced by them Section 2(5)(i) of the Act clearly excludes deposit made in a company from the term "loan" as defined under the Act. It has to be taken as an indication that the provisions of the Kerala Money-lenders Act are not to be applied to a company, which is carrying on the business of money lending. Apart from the above, the petitioners would point out that deposits to be accepted by a company incorporated under the Indian Companies Act are governed by specific provisions u/s 58Aof the Indian Companies Act. Sufficient safeguard is made in favour of the depositors under the above provision which is included in a Central statute. This is also an indication, according to the petitioners, that the provisions of the Kerala Money-lenders Act are not to apply in the case of companies carrying on money-lending business. Similarly under the Reserve Bank of India Act, 1934, there are stringent provisions regarding the deposits that can be received by a company. In exercise of the powers conferred by Sections 45J, 45K and 45L of the Reserve Bank of India Act, 1934, directions have been issued as regards interest receivable by non-banking companies.

6. Section 45-I(a) of the Reserve Bank of India Act defines a "company" as a company defined in Section 3 of the Companies Act, 1956. The term "deposit" is defined u/s 45-I(bb) to include any receipt of money by way of deposit or loan or in any other form. Sections 45K and 45L confer powers on the Reserve Bank to call for any information from non-banking institutions regarding deposits and

give directions regarding them. Section 45M casts a duty on the non-banking institutions to furnish the information sought for. There is a provision for inspection under Sections 45N and Section 45-O provides that the above-mentioned provisions included in Chapter III-B shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. It is the contention of the petitioners that in the light of these provisions it has to be taken that all the safeguards that are to be made in favour of the depositors or borrowers, as the case may be, are available in the Central Act, viz., the Reserve Bank of India Act and the same cannot be occupied by a State Act, the Kerala Money-lenders Act, 1958. Learned counsel appearing on behalf of the petitioners further pointed out that under the Companies Act, audit is compulsory as far as the companies are concerned. Section 91 of the Money-lenders Act stipulates audit by a chartered accountant. If the provisions under the Money-lenders Act are made applicable to the petitioners companies it will have to undergo audit twice without any reason.

7. A counter-affidavit has been filed by the first respondent in O. P. No. 10344 of 1989. It is contended therein that the word "person" included in the definition clause has to be given the meaning given to the word under the General Clauses Act and shall include any company or association or body of individuals whether incorporated or not. Sub-clauses (a) to (g) of Sub-section (7) of Section 2 do not exclude a company incorporated under the Indian Companies Act. It is further contended that merely because the deposit made in a company is excluded from the definition of "loan", it does not mean that a company incorporated under the Indian Companies Act would not come within the purview of the Kerala Money-lenders Act. Therefore, according to the respondent, the petitioners are bound to comply with the provisions of the Act including those contained u/s 3 regarding taking of a licence.

8. The word "person" is defined under the General Clauses Act as follows : ''"person" shall include any company or association or body of individuals, whether incorporated or not.''

9. A reading of Sub-section (7) of Section 2 of the Money-lenders Act would show that wherever the Legislature intended to exclude certain institutions from the purview of the definition of the word "money lender" which institutions would otherwise come within Sub-section (7) in view of the definition of the term "person" under the General Clauses Act such exclusions have been specifically provided under Clauses (a) to (g).

10. I find no merit in the contention raised by the petitioner relying on the provisions of Sub-section (3) of Section 3. A company would directly come under Sub-section (1) and a licence has to be obtained in the name of the company. Wherever the Legislature had thought it necessary to make a specific provision for taking licence not in the name of a body of persons whether incorporated or not, such situations have been taken care of in Clauses (a) to (c) of Sub-section

(3). Learned counsel appearing on behalf of the petitioners made a reference to the form in which the application for grant of a money-lender''s licence has to be made and contended that the particulars which are to be provided in the form would give an indication that it is not applicable to a company. I do not find much force in this contention also. The application is to be submitted as per the provisions contained under Sub-rule (1) of Rule 3 of the Kerala Money-lenders Rules, 1964. The above rule provides that an application for the money-lender''s licence shall be made to the licensing authority in Form A. There are no separate rules for submitting an application for licence by a natural person or firm or a company. Sub-clause (a) of Sub-section (3) of Section 3 provides that where a money-lender is a registered firm the licence shall be obtained in the firm''s name. If the petitioner''s contention is to be accepted then even an application in the name of a firm is not contemplated going by the wording of the form prescribed under Sub-rule (1) of Rule 3. Therefore, I find that the particulars directed to be given in the prescribed form such as father''s name, etc. would not indicate that a licence in the name of the company incorporated under the Companies Act is not contemplated by the provisions-of the Act.

11. Reliance placed on Section 58A of the Indian Companies Act, 1956, and several provisions of the Reserve Bank of India Act, 1934, by the petitioners in support of their contention that a company incorporated under the Indian Companies Act will not come within the purview of the Kerala Money-lenders Act is also not of much force. What is taken into consideration by Section 58A of the Indian Companies Act is deposit invited or accepted by a company either from the public or from its members. Elaborate provisions are made in the above section regarding the manner in which such deposits can be accepted and how it has to be operated. The provisions of the Reserve Bank of India Act, 1934, relied on by the petitioners are also in respect of such deposits. It is relevant to note that u/s 2(5)(i) of the Money-lenders Act a deposit of money or other property in a Government Post Office Savings Bank or in a bank, or in a company as defined in the Companies Act, 1956, or with a co-operative society are excluded from the meaning of the term "loan". Therefore, the petitioners cannot contend that in respect of the money lending transactions carried on by the petitioners elaborate provisions are made both under the Indian Companies Act, 1956, as well as in the Reserve Bank of India Act, 1934, incorporating sufficient safeguards in favour of the depositors and therefore, it is unnecessary to make applicable the provisions of the Kerala Money-lenders Act to companies which are carrying on money lending business. Apart from the above, the scope of the provisions under the Companies Act and the Reserve Bank of India Act referred to by the petitioners is entirely different from the scope of the provisions contained under the Kerala Moneylenders Act and the very scheme of the Act is different. The petitioners had to admit that provisions like those contained in Sections 5, 6, 7 and 8 are not available in the two Central acts. The directions contained u/s 9 of the Money-lenders Act regarding keeping books, giving receipt, etc. are also incorporated only in the Kerala Act. The State Government is authorised to

appoint Inspectors as per the provisions contained u/s 10 in order to see that the provisions under the Act are being implemented by those who are carrying on the business of money lending. Violations of the provisions are made punishable under the Act. u/s 11A the licensing authority is empowered to demand additional security under certain circumstances and there is provision for forfeiture of the security. This would clearly show that what has been intended to be achieved by the Kerala enactments is something entirely different from the scope of the provisions under the Central enactment relied on by the petitioners.

12. Then the only other contention put forward by the petitioners is that since there are provisions under the Companies Act for compulsory audit a second audit under the Money-lenders Act, 1958, in the case of companies which are carrying on money lending business is unnecessary, I find no merit in this complaint also. The scope of the audit report as per the provisions contained u/s 227 of the Companies Act is entirely different from the scope of audit u/s 9(1) of the Kerala Money-lenders Act which is restricted to the compliance or non-compliance with the provisions of the Money-lenders Act.

13. In the light of the above discussion, I am inclined to take the view that the company registered under the Indian Companies Act, 1956, would come within the definition of "money-lender" u/s 2(7) of the Kerala Money-lenders Act and, therefore, be bound by all the other provisions of the Act applicable to a money-lender including the liability to take a licence. The petitioners are, therefore, not entitled to a declaration as sought in the original petition.

14. In the result, the original petitions fail and they stand dismissed.