

(1959) 03 MP CK 0011
In the Madhya Pradesh High Court
Case No : C.R. No. 81 of 1959

Mangilal Narayan Patel

APPELLANT

Vs

R.R. Contractor and Co. and another

RESPONDENT

Date of Decision : 17-03-1959

Acts Referred:

Madhya Bharat Money Lenders Act, 1950 — Section 3

Citation : (1959) MPLJ 859

Hon'ble Judges : P.V. Dixit, J

Bench : Single Bench

Advocate : R.C. Waghmare, for the Appellant;

Final Decision : Dismissed

Judgement

P.V. Dixit, J.

The opponent instituted a suit against the Petitioner for the recovery of Rs. 437-8-0 as balance of the price of certain machinery and implements sold to the Defendant during the period from 22nd October 1953 to 11th November 1953. The Defendant admitted the sale transaction. He also admitted the payments made by him for which the Plaintiff had given credit to him. He stated that he was not aware of the details of the machinery purchased by him and their price. In his special pleading, the Defendant averred that the Plaintiff-firm was a moneylender; that he was an agriculturist; and that as the Plaintiff had failed to get itself registered as required by Section 3 of the Madhya Bharat Money Lenders Act the suit was not maintainable. This contention of the Defendant found favour with the learned trial Judge who accordingly dismissed the suit. The Plaintiff thereupon preferred an appeal before the District Judge of Nimar. The learned District Judge disagreeing with the decision of the trial Court held that the transaction in suit was one of sale and not of loan and that, therefore, the Madhya Bharat Money Lenders Act was not applicable to the case. He accordingly gave to the Plaintiff a decree for Rs. 405-4-9 besides interest and costs. The Defendant has now come up in revision to this Court.

Mr. Waghmare, learned Counsel for the Petitioner, argued that from the course of dealings it was evident that the Defendant had operated an account with the Plaintiff in respect of the machinery and implements purchased by him and each item after being debited against the Defendant became a separate debt; that at the foot of the said account the Plaintiff claimed Rs. 437-8-0 to be due to him; and that the dealings between the parties were, therefore, in the nature of a loan transaction within the meaning of Section 2(6) of the Madhya Bharat Money Lenders Act, 1950.

The contention is without any force. Section 3(1) requires that every moneylender shall get himself registered in accordance with the procedure prescribed in that Sub-section and Sub-section (2). Sub-section (3) of Section 3 on which the Defendant based his objection as regards the maintainability of the Plaintiff's suit runs as follows:

No moneylender shall be entitled to bring any suit for the recovery of his loan unless the provisions of this section are complied with.

It will be seen that Section 3(3) of the Act applies only in the case of a suit brought by a moneylender in respect of a loan advanced by him. Now, "loan" has been defined in Section 2(6) of the Act and the material portion of the definition is as follows--

Loan means an advance, whether of money or in kind, at interest and shall include any transaction, which the Court finds to be in substance a loan, and also includes a pawn but it shall not include.--

This is admittedly not a case of an advance either of money or in kind, to fit machinery and implements. The Defendant admitted that he had purchased the machinery. It was never his plea that after the purchase transaction there was an agreement between him and the Plaintiff under which the Plaintiff agreed to treat the amount due from him on account of the price of the goods as a loan by him repayable with interest at a certain rate. It cannot be argued that in every case where goods are sold on credit and where the purchaser agrees to pay the price with interest, the transaction amounts in substance to a loan. What is to be looked are the facts of each transaction to find out whether the transaction amounted in substance to a transaction of loan or to a transaction of sale. Here, there is nothing to show that the price due from the Defendant was by agreement treated as a loan by the Plaintiff or that the parties had treated the purchase money as paid off in its entirety and the amount equivalent to the unpaid purchase money as being due from the purchaser to the seller by way of loan. In fact, there were no such pleadings by the Defendant. In the absence of such pleadings in defence, the learned District Judge rightly treated the transaction as a sale transaction outside the purview of the Money Lenders Act.

The fallacy in the argument of the learned Counsel that when the Plaintiff had debited each item against the Defendant, it became a separate debt and, therefore, a loan lies in assuming that every debt is a loan. A loan is something

quite different from a debt. For a loan there must be a lender, a borrower, a thing loaned for use, as well as a contract between the parties for the return of the thing loaned. A loan contracted no doubt creates a debt. But there may be a debt contracted without contracting a loan. A dividend declared by a company is after its due date a debt of the company to the shareholder; moneys due from an insurance company under a policy are debts; arrears of rent are debts; but none of them is a loan.

The matter seems to be concluded by the decision of the Supreme Court in *Radha Kissen Chamria and Others Vs. Keshardeo Chamria and Another*, where the approach to the question such as the one arising in this case has been indicated. The Supreme Court affirmed the decision of the Calcutta High Court in *Radha Kisen Chamria and Others Vs. Keshardeo Chamria and Another*, In that case when the purchasers failed to complete the agreement for sale of certain property, the vendor instituted a suit against them for specific performance of the agreement. The suit was compromised and a decree was passed in terms of the agreement arrived at between the parties under which the vendor was to accept payment of a portion of the money payable under the agreement for sale immediately and the balance in certain instalments with interest. The compromise decree vested the property agreed to be sold in one of the purchasers and created a charge on it for the purchase money unpaid for the time being. Later on the purchasers contended that they were borrowers within the meaning of Section 3 of the Bengal Money Lenders Act and that, therefore, they could not be made to pay an amount in excess of the amount prescribed by Section 30 of the Act in respect of a loan. The Supreme Court negated this contention pointing out that the fact that under the compromise decree the moneys were payable in a number of instalments instead of at once did not show that the price due had become a loan and that the compromise decree did not alter the intrinsic nature of the moneys due to the vendor. It was also emphasized that in such cases there must be evidence to show that subsequent to the sale and purchase transaction there was an agreement between the parties to treat the unpaid price as a loan, an agreement to convert the outstanding purchase money into a loan by the vendor to the purchaser. The Supreme Court referred to the decisions of the Calcutta High Court in *Nirode Barani Debya and Another Vs. Sisir Kumar Mukherjee*, and *Fateh Chand Mahesri Vs. Akimuddin Chaudhuri*, and after discussing the facts of those cases pointed out that in both those cases the parties had agreed to treat the purchase money as paid off in entirety and the amount equivalent to the unpaid purchase money as being due by the purchaser to the vendor by way of loan. In the instant case, there is no evidence of such an agreement.

For these reasons, I think the learned District Judge was right in rejecting the contention of the Petitioner that the transaction in suit was a loan transaction and that the Plaintiff's suit was not maintainable. The Plaintiff's claim was rightly decreed. In the result, this petition is rejected.