

(1986) 12 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 242 of 1979

Nilakantha Mishra (died) and after him Saudamini Misra and Others APPELLANT

Vs

Collector and District Magistrate and Another RESPONDENT

Date of Decision : 15-12-1986

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (1987) 63 CLT 75

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : R.N. Sinha, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, C.J.—The Petitioner, a registered money-lender who died during the pendency of this application and has been substituted by his legal representatives, challenged the order dated 13-1-1978 passed by the Subdivisional Officer, Bhanjanagar (opp. party No. 2) u/s 18-B(2) of the Orissa Money-Lenders Act, 1939 (for short "the Act") refusing to pass an order declaring the particulars of the loans advanced by him within the specified amount. The said order (Annexure-2) has been confirmed by the Collector, Ganjam (opp. party No. 1) in appeal.

2. The deceased Petitioner was registered as a moneylender under the Act for carrying on money-lending business to the extent of Rs. 20,000/-. The registration certificate was numbered as 5 of 1975. On 1-3-1975, he advanced a loan of Rs. 21,000/- and on 2-6-1976, he advanced a further loan of Rs. 300/-. Shortly after the first loan was advanced, the Orissa Ordinance No. 4 of 1975 was promulgated on 22-9-1975 whereunder, amongst other provisions, Section 18-B was inserted in the Act and Section 4 was substituted prohibiting money-lending without registration after 22-11-1975. Shortly thereafter, Orissa Act 54 of

1975 was enacted by the State Legislature on 21-12-1975 amending the Act retrospectively from 22-9-1975, i.e., the date of promulgation of the Ordinance. Section 4 of the Act was substituted by the Orissa Act which prohibited any person to carry on the business of money-lending after 22-11-1975 unless he was registered as a money-lender under the Act.

3. According to the provision of Section 18-B, the State Government was empowered to require the money-lenders by a notification to produce before the prescribed authority "all records relating to their business including documents evidencing advance of loans". It would be better to quote Sub-section (2) of Section 18-B in whole:

(2). The authority specified in the notification referred to in Sub-section (1) shall scrutinise the documents with a view to determining if the transactions exceed the amount for which the moneylender has obtained the registration certificate and shall, after giving the money-lender a reasonable opportunity of being heard, pass an order declaring the particulars of transactions that are within the amount specified in the said certificate.

Sub-section (8) creates a bar for the courts "to entertain any claim in respect of any loan advanced prior to the date of the order referred to in Sub-section (2) unless the particulars thereof are contained in the said order and all suits in respect of such claims shall stand abated."

4. The State Government by a gazette notification dated 14-7-1976 directed all registered money-lenders to produce their records of business and documents evidencing the loans before the specified authority. In pursuance thereof, the Petitioner filed an application before the Sub-divisional Officer, Bhanjanagar (opp. party No. 2) for issue of necessary certificate along with his relevant records. The Subdivisional Officer by his order dated 24-1-1978 (Annexure-2) declined to issue any order in his favour and took the view that inasmuch as the Petitioner had obtained a registration certificate for Rs. 20,000/- only, he had contravened the said limitation and accordingly, he cancelled the registration certificate and disqualified the Petitioner from being registered as a money-lender for a period of 3 years in terms of Sub-section (4).

5. The Petitioner filed an appeal before the Collector of Ganjam u/s 18-B(6) against the said order. But the appeal was dismissed on the ground of limitation as well as on merits. On merits, the Collector took the same view namely, that the Petitioner having advanced loans in excess of the amount mentioned in the registration certificate, was guilty of violation of the pecuniary limitation.

6. Mr. R.N. Sinha, learned Counsel for the Petitioner, challenged the appellate order (Annexure-3). He submitted that the appellate authority has not applied his mind in considering the question of limitation and that on merits also, the authorities acted contrary to law in refusing to declare the particulars of the transactions within the specified amount.

7. The appellate authority wrongly rejected the application of the Petitioner for condoning the delay in filing the appeal though there were good reasons for condoning the delay.

8. With regard to the merits of the case, the submission of Mr. Sinha was that the prohibition in Section 4 that without registration no person could carry on business of money-lending became the law from 22-11-1975 only. The first transaction of loan was before Section 4 was substituted providing the prohibition, and in any case, was made after the Petitioner had obtained the registration and the loans having been advanced before the rigour of Section 18-B came into force, the order should have been passed declaring the particulars of the transaction as provided in Section 18-B(2).

Mr. Sinha also referred to the decisions of the Supreme Court in *Sant Saran Lal and Anr. v. Parsuram Sahu alias Kishan Lal Sahu and Ors.* 1965 S.C.D. 1117 and *Madhusudano Mollana v. Lontaru Naiko and Ors.* 1965 S.C.D. 1129. The first case arose from the Bihar Money Lenders Act and the second from the Orissa Act. In both the cases, the question was as to whether the money lender could successfully sue his debtors for loans advanced in excess of the amounts mentioned in the registration certificate and it was held that the provisions of the Act as they stood at the relevant time, in the absence of any special provision to the contrary, did not debar the money-lender to lend money in excess of the maximum amount mentioned in the registration certificate.

Both the cases referred to by Mr. I. Sinha are apparently distinguishable as when those decisions were given, there was no provision in the Acts of the nature contained in Section 18-B of the Orissa Act. The legislature must be deemed to be aware of those decisions of the Supreme Court and there is no indication in Section 18-B to neutralise the effect of those decisions.

In that view of the matter, the Petitioner cannot be said to have acted in an improper manner on the date of the first transaction which otherwise he was not prohibited or debarred from entering into. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless, therefore, there are words in the statute sufficient to show the intention of the legislature to affect the existing rights. "It is deemed to be retrospective only".

Sub-section (8) precludes a court from entertaining any claim in respect of any loan advanced prior to the date of the order referred to in Sub-section (2) unless the particulars thereof are contained in the said order, so much so that even the pending suits in respect of such claims were to stand abated after introduction of the said provision unless an order was issued by the specified authority giving particulars of the loans in question advanced even prior to the coming into force of the said provision.

Coming to Sub-section (2), it appears that the authority has to pass an order declaring the particulars of the transactions that are within the amount specified

in the said certificate. Sub-section (2) read with Sub-section (8) obviously has been intended to apply to the transactions of a money-lender made even prior to the coming into operation of Section 18-B and according to the scheme of Sub-section (2), the specified authority can give the particulars of those transactions which are within the specified amount.

9. The Supreme Court in the case of Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others, , observed that a construction that affects vested rights should never be adopted if the words are open to another construction.

Again, in the case of Chandrasingh Manibhai and Others Vs. Surjit Lal Ladhamal Chhabda and Others, , while construing the newly introduced Section 12(2) of Bombay Rents, Hotel and Lodging House Rent Control Act, 1947 which enacted that no suit for recovery of possession shall be instituted, the Supreme Court held that the said provision was prospective not affecting a suit commenced earlier to the passing of the Act.

With reference to the provisions of abatement of suits, this Court in the case of Narayan Choudhury v. Koka Das and Anr. 57 (198) C.L.T. 524, held that since the statute intended to regulate the business of money lending and the amending statute came for the purpose of imposing a greater restriction and control, an opportunity must be given to the money lender to comply with the statutory requirement within a reasonable time to be fixed by the court before an order of abatement can be passed. This Court gave an opportunity to the Plaintiff even at the second appellate stage to comply with the statutory requirement and thus tried to harmonise the principle of abatement.

10. When the Supreme Court in the decision reported in Madhusudano Mollana's case 1965 S.C.D. 1129 (supra) held that the amount in excess of the certificate of registration could be recovered by way of a suit and the amount of Rs. 21,000/- was advanced as loan by the deceased Petitioner honestly believing that in the event of non-payment the same could be recovered by way of a suit since he had registered himself under the Act, in the absence of any provision that the amount was advanced in order to harass or exploit the debtor, it would amount to confiscation of the entire amount if an order declaring the particulars was not given which does not seem to be the intention of the legislature. Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law. When the language of Section 18-B can be interpreted in a manner by which vested right of suit as declared by the Supreme Court in Madhusudano Mollana's case 1965 S.C.D. 1129 (supra) can be protected, an interpretation confiscating such right is to be avoided because such an interpretation would be violative of Article 300-A. The legislature was aware of the decision of the Supreme Court. In case its intention would have been to abrogate the effect of the said decision in respect of the transactions before Section 18-B was made effective, it would not have failed to express the same specifically as was done in the matter of giving the amending Act including

Section 18-B retrospective effect from 22-9-1975. The above conclusion will also be in line with the interpretation given to Sub-sections (2) and (8) of Section 18-B.

11. From the above decisions of this Court, it is clear that this Court accepted the principle that the provisions of Section 18-B applied from a retrospective date and thus affected all transactions entered into even prior to the date of the coming into force of Section 18-B. But to apply a rule of reasonable construction, I would at the same time hold that if there is a violation of the regulation by a money lender in exceeding the limitation by granting loan or loans of higher value(s) then the prescribed authority, instead of refusing completely to certify the amount should pass an order in favour of the money lender relating to the transaction(s) which may be covered within the pecuniary limits of the registration certificate granted under the Act, as otherwise a suit would not be entertained by the court and the amount of loan would be lost to him. This view appears to me to be equitable as it would subserve the purpose of the restrictions brought in the statute by the amending Act. The money lender, however, would be liable to be subjected to the other penalties and disabilities contemplated under Sub-section (4) of Section 18-B, namely cancellation of his certificate and debar ring him from being again registered as a money lender upto a period of 3 years.

12. In view of the above discussions, it must be held that the opposite party No. 2 should have passed an order under Sub-section (2) of Section 18-B certifying the particulars of the loans advanced by the Petitioner to the extent of Rs. 20,000/- only.

I would accordingly allow this application in part and quash Annexures-2 and 5 passed by the opposite parties to the extent they decline to issue any order under Sub-section (2) of Section 18-B and remit the matter back to opposite party No. 2 with a direction to pass an order declaring the particulars of the transaction in respect of Rs. 21,000/- to the extent of Rs. 20,000/- only.

In the circumstances of the case, I would leave the parties to bear their own costs.

S.C. Mohapatra, J.

13. I agree.