

(2011) 04 GUJ CK 0028
In the Gujarat High Court

Case No : Letters Patent Appeal No. 113 of 2010 in Special Civil Application No. 66 of 2010, Civil Application No. 2794 of 2011 in Letters Patent Appeal No. 113 of 2010, Letters Patent Appeal No. 1094 of 2010 in Special Civil Application No. 5288 of 2009, Letters P

Radhe Estate Developers

APPELLANT

Vs

Mehta Integrated Finance Co. Ltd and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Companies (Amendment) Act, 2000 — Section 25
Companies Act, 1956 — Section 3, 591
Constitution of India, 1950 — Article 246, 246(3), 254
Industrial Development Bank of India Act, 1964 — Section 2
Penal Code, 1860 (IPC) — Section 174, 175
Reserve Bank of India Act, 1934 — Section 3(1), 3(2), 3(3), 3(4), 45H

Citation : (2011) 2 GLH 584

Hon'ble Judges : S.J. Mukhopadhaya, C.J.;K.M. Thaker, J

Bench : Division Bench

Advocate : M.B. Gandhi, Chinmay M. Gandhi, 1 and S.R. Gupta, for the Appellant; Jaswant K. Shah, A.G.P. for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, C.J.—In all these appeals as common question of law is involved, they were heard together and disposed of by this common judgment.

2. The Appellants-Radhe Estate Developers of Letters Patent Appeal No. 113 of 2010 preferred a writ petition-Special Civil Application No. 13024 of 2009 for a direction on the Respondent-Assistant Registrar (Money Lending), Ahmedabad, to decide the application preferred by it for prosecution of the 1st Respondent-Mehta Integrated Finance Limited, for having obtained licence under the Bombay Money-Lenders Act, 1946, (hereinafter referred to as "the Money-Lenders Act") and thereby prosecute it u/s 35A and 35B of the Money-Lenders Act. Learned Single Judge, having noticed that the representation preferred by the Appellant-

writ Petitioner is pending with the authorities, disposed of the writ petition by the impugned order dated 14th December 2009 with a direction to decide the said representation, giving rise to the appeal.

3. The other appeals, i.e. Letters Patent Appeals Nos. 1094, 1095 and 1097 of 2010, have been preferred by State of Gujarat or its authorities against the common judgment dated 13th January 2010 passed in four different writ petitions, wherein learned Single Judge held that the Bombay Money-Lenders Act, 1946, would not be applicable to the companies, which are Non-Banking Financial Companies (hereinafter referred to as "N.B.F.Cs.") and governed by Chapter III of the Reserve Bank of India Act, 1934 (hereinafter referred to as "the R.B.I. Act"), and thereby set aside the notices issued by the Assistant Registrar (Money-Lending) to four different companies under the Money-Lenders Act.

4. The questions required to be determined in these appeals are:

(i) whether the Bombay Money-Lenders Act, 1946, apply to the Non-Banking Financial Companies?

and (ii) whether the Bombay Money-Lenders Act, 1946, is repugnant to the extent of Non-Banking Financial Companies registered under the Reserve Bank of India Act, 1934?

5. Mr. Jaswant K. Shah, learned A.G.P. appearing on behalf of the State, while referring to the objects and reasons of the Money-Lenders Act, submitted that the said Act was enacted by the State to make better provisions for the regulation and control of transactions of money-lending in the State. The State Legislature has exclusive power to enact the laws under Article 246(3) of the Constitution of India, particularly with regard to money-lending. Entry 30 of List-II of the 7th Schedule of the Constitution empowers States to enact such laws with regard to "money-lending and money-lenders" and according to him, salient provisions of Bombay Money-Lenders Act, 1946 are enumerated in Sections 5, 6, 8, 11, 18, 19, 23, 25(1) and 25(3), 26, 32, 33, 34 and 35. He has submitted that the contents of the provisions of these Sections make it clear that the same are made to protect "weaker sections of the society" from the exploitation of the money-lenders.

6. So far as Non-Banking Financial Companies are concerned, learned A.G.P. submitted that the Reserve Bank of India is entrusted with the responsibility of regulating and supervising the Non-Banking Financial Companies by virtue of the power vested in it under Chapter IIIB of the R.B.I. Act, which came into effect from 1st December 1964. Sections 45H, 48-I, 45J, 45K, 45L, 45M, 45O, 45P and 45Q were initially inserted. Subsequently, by Reserve Bank of India (Amendment) Act, 1997, the provision relating to Non-Banking Financial Companies came to be introduced. Therefore, the provisions relating to N.B.F.Cs. having come to be incorporated w.e.f. 19th January 1997, Reserve Bank of India has the regulatory and supervisory powers with the following objects:

(a) to ensure healthy growth of the financial companies,

(b) to ensure that these companies function as part of the financial system within the policy framework in such a manner that their existence and functioning do not lead to systematic abrasions,

and (c) the quality of surveillance and supervision exercised by the Reserve Bank of India over the N.B.F.Cs. is sustained by keeping pace with the developments that take place in this sector of the financial system.

7. He would submit that if Chapter III of the R.B.I. Act is read in its entirety, it would mean that these provisions are made for protection of the interest of the depositors. There is no provision in this Chapter by which a borrower, who has taken loan from N.B.F.Cs., is granted protection.

8. Learned Counsel for the State would further contend that the Circular dated 24th May 2007 issued by the Reserve Bank of India refers to charging excessive rates of interest by N.B.F.Cs. as against Fair Practices Code. There are no steps indicated by Reserve Bank of India against N.B.F.Cs. to be taken in such circumstances. The provisions contained in Chapter IIIB of R.B.I. Act, as amended in 1997, according to him, have been introduced altogether for different objects and purpose, and do not meet with the requirement of the provisions contained under the Money-Lenders Act. While assailing the common judgment dated 13th January 2010 rendered by the learned Single Judge, learned A.G.P. would contend that the learned Single Judge has allowed the writ petitions solely on the ground that in view of Chapter IIIB of the R.B.I. Act, the provisions of Money-Lenders Act will not apply to N.B.F.Cs., therefore, according to him, the provisions of the Money-Lenders Act contravene any of the provisions of Chapter IIIB of the R.B.I. Act, so far it relates to N.B.F.Cs. He submitted that except laying out appropriate internal principles and procedure for interest rate, processing and charges to be levied by the N.B.F.Cs, no punitive or regulatory steps have been prescribed under Chapter IIIB of the R.B.I. Act, and in absence of any overlapping provision, there is no repugnancy in any manner with the Money-Lenders Act.

9. Learned A.G.P. referred to different decisions of the Supreme Court and Federal Court with regard to repugnancy of an Act, which would be referred to at appropriate stage.

10. In Letters Patent Appeal No. 1095 of 2010, Respondent - M/s. Sundaram Finance Limited has taken a plea that it is a Company incorporated under the "Indian Companies Act, 1913" and registered with the Reserve Bank of India as contemplated u/s 45IA of the R.B.I. Act, and reclassified as a finance company. In other cases, Respondent G.E. Money Financial Services Limited of Letters Patent Appeal No. 1094 of 2010 and Respondent-Bussan Auto Finance India Private Limited in Letters Patent Appeal No. 1097 of 2010, it is stated that they are Companies registered under the "Indian Companies Act, 1956", and also registered with the Reserve Bank of India u/s 45IA of the R.B.I. Act. They were

served with notices u/s 13A of the Money-Lenders Act, calling upon them to produce certain documents with clear understanding that on failure to comply with the same, action can be initiated u/s 34 of the Money-Lenders Act r.w. Sections 174 and 175 of the Indian Penal Code.

11. Learned Counsel for the Respondents referred to Section 45I(aa) r.w. Section 3 of the R.B.I. Act which defines "company", Section 45I(f) which defines "non-banking financial company" and some other provisions, to suggest that they are N.B.F.Cs. and guided by Chapter IIIB of the R.B.I. Act, and are not governed under the provisions of Money-Lenders Act. While referring to other provisions of the R.B.I. Act, i.e., Sections 45IA, 45IC, 45L, 45M, 45MC, 45N, 45NB, 45NC and 45Q, learned Counsel submitted that Chapter IIIB is a self-contained code in itself, governing the business and activities of the N.B.F.Cs in every way possible. They also referred to Supreme Court decisions, which will be dealt with at appropriate stage, and submitted that no interference is called for against the common judgment dated 13th January 2010 passed by the learned Single Judge.

12. We have heard learned Counsel appearing on behalf of the parties, perused the record and considered the provisions of law referred to above and different decisions of the Supreme Court and Federal Court.

13. For the determination of the issue, it is important to notice the relevant provisions of the Money-Lenders Act and the R.B.I. Act.

The Bombay Money-Lenders Act, 1946:

Section 2 contains "Definitions", Sub-section (2) relate to "business of money-lending", Sub-section (4) defines "company", Sub-section (6) defines "interest", Sub-section (9) defines "loan" and Sub-section (10) defines "money-lender". The definitions of "business of "money-lending", "company" and "money-lender", being important for determination of the issue, are quoted hereunder:

Section 2(2). "business of money-lending" means the business of advancing loans whether or not in connection with or in addition to any other business;

Section 2(4). "company" means a company as defined in the Indian Companies Act, 1913 (VII of 1913), or formed in pursuance of an Act of Parliament of the United Kingdom or by Royal Charter of Letters Patent, or by an Act of the Legislature of a British Possession;

Section 2(10). "money-lender" means -

- (i) an individual, or
 - (ii) an undivided Hindu family; or
 - (iiia) a company, or
 - (iv) an unincorporated body of individuals,
- who or which-

- (a) carries on the business of money-lending in the State or
- (b) has his or its principal place of such business in the State or
- (v) any other banking financial or any institution which the State Government may, by notification in the official Gazette, specify in this behalf.

Section 4 deals with "Register of money-lenders", which stipulates that every Assistant Registrar is required to maintain for the area in his jurisdiction a register containing the name of money-lenders, as quoted hereunder:

4. Register of money-lenders. Every Assistant Registrar shall maintain for the area in his jurisdiction a register of money-lenders in such form as may be prescribed:

Provided that any such register maintained in any area to which this Act is extended by the Bombay Money-lenders (Unification and Amendment) Act, 1959 (Bom. L of 1959) immediately before the commencement of this Act that area shall, in so far as it is not inconsistent with this Act or the rules made thereunder, be deemed to have been maintained under this Act.

Under Section 5 money-lender cannot carry on business of money-lending except for area under licence, and except in accordance with terms of licence. Section 6 relates to "application for licence", which a money-lender is required to apply annually in the prescribed form before the Assistant Registrar of the area. u/s 7, after making summary inquiry in accordance with the prescribed procedure, a licence can be granted, and to be recorded in the register. Refusal of issuance of licence, in normal course, is not permissible, except on certain grounds as shown in Section 8. The Registrar has the power to cancel the licence u/s 8A. Section 9 deals with "term of licence".

14. From the aforesaid provisions, it will be clear that u/s 2(4) of the Money-Lenders Act "company" means only a company:

- (i) as defined in the Indian Companies Act, 1913,
- (ii) formed in pursuance to an Act of Parliament,
- (iii) formed by Royal Charter or Letters Patent, or
- (iv) by an Act of Legislature of the British Possession.

It do not include any company under the Indian Companies Act, 1956.

15. u/s 2(10) "money-lender" includes:

- (i) an individual,
- (ii) an undivided Hindu family,
- (iii) a company i.e.:

- (a) a company as defined under the Indian Companies Act, 1913,

- (b) a company formed in pursuance of an Act of Parliament,
- (c) a company formed by Royal Charter or Letters Patent and
- (d) a company formed by an Act of Legislature of British Possession
- (iv) an incorporated body of individuals, and
- (v) other banking financial or any institution which the State Government may, by notification in the official Gazette specified in this behalf.

16. From the aforesaid provisions of the Money-Lenders Act, it will be evident that

(i) no company incorporated under the provisions of the Indian Companies Act, 1956, is covered by Money-Lenders Act,

and

(ii) in absence of any notification issued by the State Government, no banking financial or any institution carries on the business of money-lending is covered under the Money-Lenders Act.

The Reserve Bank of India Act, 1934:

17. Chapter IIIB relates to "provisions relating to non-banking institutions receiving deposits and financial institutions".

Section 45I deals with the "definitions". Under Clause (a) of Section 45I while "business of a non-banking financial institution" is defined, which includes "financial institution" as defined under Clause (c) of Section 45I. It also includes "non-banking financial company" as defined under Clause (f) of Section 45I. Clause (aa) to Section 45I defines "company". Clause (e) of Section 45I defines "non-banking institution". All the aforesaid definitions, being relevant for determination of the issue, are quoted hereunder:

45I. Definitions.- In this Chapter, unless the context otherwise requires,

(a) "business of a non-banking financial institution" means carrying on the business of a financial institution referred to in Clause (c) and includes business of a non-banking financial company referred to in Clause (f);

(aa) "company" means a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) and includes a foreign company within the meaning of Section 591 of that Act;

(c) "financial institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:

(i) the financing, whether by way of making loans or advances or otherwise of any activity other than its own;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in Clause (c) of Section 2 of the Hire-Purchase Act, 1972 (25 of 1972);

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale or units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business,

(a) agricultural operations, or

(aa) industrial activity; or

Explanation.- For the purposes of this clause, "industrial activity" means any activity specified in Sub-clauses (i) to (xviii) of Clause (c) of Section 2 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(b) the purchase, or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

(e) "non-banking institution" means a company, corporation, or co-operative society;

(f) "non-banking financial company" means

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the official Gazette, specify.

Under Section 45IA no non-banking financial company can commence or carry on the business of a non-banking financial institution without obtaining a certificate of registration issued under Chapter IIIB and having the net owned fund of twenty-five lakh rupees or such other amount not exceeding two hundred lakh rupees as the Bank by notification in the Official Gazette may specify. Every

non-banking financial company is also required to file an application to the Reserve Bank of India in such a form as may be specified. In case of rejection of application for registration or cancellation of certificate of registration, there is a provision of appeal under Sub-section (7) of Section 45IA of the R.B.I. Act.

Reserve Bank of India has power to determine the policy and issue directions in the public interest to regulate the financial system of the country to its advantage, or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company u/s ec.45JA, which reads as follows:

45JA. Power of Bank to determine policy and issue directions.- (1) If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the direction so issued.

(2) Without prejudice to the generality of the powers vested under Sub-section (1), the Bank may give directions to non-banking financial companies generally or to a class of non banking financial companies or to any non-banking financial company in particular as to-

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies.

Reserve Bank of India has complete regulative control and regulative power as evident from different provisions of Chapter IIIB, including Sections 45IB, 45IC, 45J, 45K, 45L, 45M, 45MA. Interest of the depositors has been taken care u/s 45MB, which deals with "power of bank to prohibit acceptance of deposit and alienation of assets", as quoted hereunder:

45MB. Power of Bank to prohibit acceptance of deposit and alienation of assets.-

(1) If any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter, the Bank may prohibit the non-banking financial company from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instruments or any law for the time being in force, the Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Bank for such period non exceeding six months from the date of the order.

The Bank can also file winding up petition, and thereby take penal action in case a non-banking financial company is unable to pay the debts, or by provisions of Section 45IA disqualify the company to carry on business, if the continuance of the non-banking financial company is detrimental to the public interest or to the interest of depositors of the company as evident from Section 45MC. The total power and control of the Reserve Bank of India over such N.B.F.Cs. will be evident from the rest of the provisions under Chapter IIIB, including Sections 45N, 45NA and 45NB.

18. Thus, it will be evident that Reserve Bank of India has full control over the N.B.F.Cs. and can take regulatory measures, and in an appropriate case, it can take penal action like winding up, etc. in the interest of its customers, namely, the depositors.

19. We have noticed that the State Government has not issued any notification u/s 2(10)(b) with regard to any banking financial or any institution, such as N.B.F.Cs., bringing it within the meaning of "money-lender" as defined u/s 2(10) of the Money-Lenders Act. It has already been held that except the companies mentioned thereunder and referred to above, companies incorporated under the Indian Companies Act, 1956, do not come within the definition of "money-lender" as defined u/s 2(10)(iiiia) r.w. Section 2(4) of the Money-Lenders Act.

20. Per contra, it will be evident that "company" as defined in Section 3 of the Indian Companies Act, 1956, come within the definition of Section 45I(aa) of the R.B.I. Act. Section 3 of the Indian Companies Act, 1956, defines "company", including the companies integrated under the Indian Companies Act, 1956, Indian Companies Act, 1982, Indian Companies Act, 1913, etc. as evident from the said provision, which reads as follows:

3. Definitions of "Company", "Existing Company", "Private Company" and "Public Company".- (1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company" shall, subject to the provisions of Sub-section (2), have the meanings specified below:

(i) "company" means a company formed and registered under this Act or an existing company as defined in Clause (ii);

(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below:

(a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866) and repealed by that Act;

(b) The Indian Companies Act, 1866 (10 of 1866);

(c) The Indian Companies Act, 1882 (6 of 1882);

(d) The Indian Companies Act, 1913 (7 of 1913);

(e) The Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and

(f) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force-

(1) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act 1913 (7 of 1913); or

(2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956). in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968) in so far as other corporations are concerned;

(g) the Portugese Commercial Code in so far as it relates to "sociedades anonimas";

(iii) "private company" means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles,-

(a) restricts the right to transfer its shares, if any;

(b) limits the number of its members to fifty not including-

(i) persons who are in the employment of the company, and

(ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and

(c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company:

(d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives;

Provided that where two or more persons hold one or more shares, in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

(iv) "public company" means a company which-

(a) is not a private company.

(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

(c) is a private company which is a subsidiary of a company which is not a private company.

(2) Unless the context otherwise requires, the following companies shall not be included within the scope of any of the expressions defined in Clauses (i) to (iv) of Sub-section (1), and such companies shall be deemed, for the purposes of this Act, to have been formed and registered outside India:

(a) a company the registered office where of is in Burma, Aden or Pakistan, and which immediately before the separation of that country from India was a company as defined in Clause (i) of Sub-section (1); (3) Every private company, existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than one lakh rupees, shall, within a period of two years from such commencement, enhance its paid-up capital to one lakh rupees.

(4) Every public company, existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than five lakh rupees, shall within a period of two years from such commencement, enhance its paid-up capital to five lakh rupees.

(5) Where a private company or a public company fails to enhance its paid-up capital in the matter specified in Sub-section (3) or Sub-section (4), such company shall be deemed to be a defunct company within the meaning of Section 560 and its name shall be struck off from the register by the Registrar.

(6) A company registered u/s 25 before or after the commencement of Companies (Amendment) Act, 2000 shall not be required to have minimum paid-up capital specified in this section.

Thus it will be evident that all the companies as defined u/s 2(4) of the Money-Lenders Act now come within the meaning of "company" for the purpose of Section 45I(aa) of the R.B.I. Act.

21. Section 3 of the Indian Companies Act, 1956, was referred to by the learned A.G.P. to suggest that the companies registered even under the Indian Companies Act, 1956, now come within the definition of Section 2(4) of the Money-Lenders Act, so as to give purposeful meaning to the word "company" as referred to in Money-Lenders Act. But, such submission cannot be accepted in view of the finding recorded above, and, in absence of any other definition, it

cannot be presumed that the Indian Companies Act, 1913, as mentioned u/s 2(4) of the Money-Lenders Act, includes any Company as defined under the Indian Companies Act, 1956. Thus, the Money-Lenders Act is not applicable to the Companies incorporated under the Indian Companies Act, 1956.

22. Parliament and Legislatures of the States are empowered to make laws in respect to any of the matters enumerated in List-I and List-II in the 7th Schedule respectively. List-III in Schedule 7 is a concurrent list in relation to which Parliament and Legislatures of the States have powers to make law. However, under Article 246, conditional power has been vested with the States, as evident from Article 246 and quoted hereunder:

246. (1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2[in a State] notwithstanding that such matter is a matter enumerated in the State List.

23. Entry 30 of List-II of the 7th Schedule relates to "money-lending" and "money-lenders" apart from "relief of agricultural indebtedness". Legislature of a State has exclusive power to make law for such State or any part thereof, but it will be subject to Clause (1) and (2) of Article 246. Therefore, if any law has been made by the Parliament in its exclusive power in respect to matters enumerated in List-I or List-III in the 7th Schedule, the law in respect of such matter, if any, enacted by the Legislature of any State, shall be subject to the law made by the Parliament. Thus, a State Act is always subject to a Central Act.

24. Section 45Q of the R.B.I. Act referred to above makes it clear that the provisions of Chapter IIIB of the R.B.I. Act shall have the overriding effect notwithstanding anything inconsistent therewith contained in any other law, which includes the Money-Lenders Act, a State law, which is quoted hereunder:

45Q. Chapter IIIB to override other laws. 45Q. Chapter IIIB to override other laws.- The provisions of this Chapter 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.

Therefore, if there is inconsistency between the provisions of the R.B.I. Act and Money Lenders Act, so far as it relates to "companies" as defined u/s ec. 2(4) of the Money-Lenders Act, in that case, the provisions of R.B.I. Act will prevail.

25. Learned Counsel for the State would contend that there is no repugnancy in any manner vis-a-vis the Money-Lenders Act and Chapter IIIB of the R.B.I. Act, as they operate in a different field and different sphere. He has referred to different decisions of Federal Court and Supreme Court as mentioned earlier.

26. Article 254 of the Constitution relates to inconsistency between the laws made by the Parliament and the laws made by Legislatures of the States, which reads as follows:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

27. The operation of Article 254 is not complex. The real problem can be only noticed while determining whether a particular State law is repugnant to a Central Act. In case of AIR 1939 74 (Federal Court) the Federal Court laid down the principle of construction in regard to repugnancy, relevant portion of which reads as follows:

When the question is whether a provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attaching its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility: "Their Lordships can discover no adequate

grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not and may never be in force: (1896) AC 348 at pages 369-70.

28. Supreme Court in the case of Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, while dealing with the challenge against validity of the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953, observed as under:

34. ...Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of Section 18-G of Act 65 of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as has been noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order u/s 18-G being issued by the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could even arise....

Any repugnancy can be cured by the assent given by the President, but it is only the actual repugnancy that can be cured by the Presidential assent and not a possibility of repugnancy, as held by the Supreme Court in the case of Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.,

29. The doctrine of occupied field applies only where there is a clash between Dominion Legislation and Provincial Legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests and the question of repugnancy will not arise. Such was the observation of the Supreme Court in the case of Fatehchand Himmatlal and Others Vs. State of Maharashtra,

62. In the Canadian Constitution, the question of conflict and coincidence in the domain in which provincial and dominion legislation overlap has been considered. If both may overlap and co-exist without conflict, neither legislation is ultra vires. But if there is confrontation and conflict the question of paramountcy and occupied field may crop up. It has been held that the rule as to predominance of dominion legislation can only be invoked in case of absolutely conflicting legislation in pari materia when it will be an impossibility to give effect to both the dominion and provincial enactments. There must be a real conflict between the two Acts i.e. the two enactments must come into collision. The doctrine of Dominion paramountcy does not operate merely because the Dominion has legislated on the same subject matter. The doctrine of "occupied field" applies only where there is a clash between Dominion Legislative and Provincial Legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests. (Please see: Canadian Constitutional Law by Laskin- pp. 52-54, 1951 Edn.).

64. Many more decisions were brought to our notice, bearing on paramountcy, "occupied field," repugnancy and inconsistency. They were elaborated by counsel

sufficiently to convince us that lawyer's law is divorced from plain semantics and common understanding of Constitutional provisions becomes a casualty when doctrinal complexities are injected. May be every profession has a vested interest in the learned art of incomprehensibility for the laity. Law, in the administration of which the Bench and the Bar are partners, probably lives up to this reputation.

30. The parameter of repugnancy has been laid down by the Supreme Court in the case of *M. Karunanidhi Vs. Union of India and Another*, wherein the Supreme Court observed as under:

24. ...Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

31. In order to raise the question of repugnancy one should see whether the State law and the Union law operate on the same field and one is repugnant or inconsistent with the other, was the observation of the Supreme Court in the case of *National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others*, In the said case, the Supreme Court held as follows:

14. ...Therefore, in order to raise a question of repugnancy two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other. These are two conditions

which are required to be fulfilled. These are cumulative conditions. Therefore, these laws must tread on the same field and these must be repugnant or inconsistent with each other. In our opinion, in this case there is a good deal of justification to hold that these laws, the Industrial Disputes Act and the Rajasthan Act tread on the same field and both laws deal with the rights of dismissed workman or employee. But these two laws are not inconsistent or repugnant to each other. The basic test of repugnancy is that if one prevails the other cannot prevail. That is not the position in this case....

32. In the case of Ahmedabad Mill Owners' Association v. I.G. Thakore reported in (1964) 5 GLR 705 a Division Bench of this Court while upheld the validity of State legislation observed that the object of the two statutes may be similar and yet there would be no repugnancy if they supplement each other and co-exist if the paramount legislation does not cover the entire field occupied by the State law and is not inconsistent with the latter.

33. In the present case, we have noticed that State Government has not issued any notification u/s 2(10)(v) of the Money Lenders Act bringing banking financial or any institution within the definition of "money-lender". A "company" as defined under Sub-section (4) of Section 2 of the Money-Lenders Act, which includes a "company" under Indian Companies Act, 1913, though comes within the definition of "money-lender" under Sub-section (10) of Section 2 of the Money-Lenders Act, such company, in view of such company incorporated under the Indian Companies Act, 1913, having now come within the definition of "company"/"existing company" u/s 3 of the Companies Act, 1956, r.w. Section 45I(aa) of the Reserve Bank of India Act, 1934, which defines "company"; all companies, i.e. companies under the Indian Companies Act, 1886, Indian Companies Act, 1866, Indian Companies Act, 1882, Indian Companies Act, 1913, Indian Companies Act, 1956, as also the companies formed and registered under any Act in force before Indian Companies Act, 1866, including the companies formed pursuant to an Act of Parliament of the United Kingdom or the company formed by Royal Charter or Letters Patent or the company formed by an Act of the Legislature of a British Possession, now come within the meaning of "company" as defined u/s 45I of the Reserve Bank of India Act, 1934 in view of Chapter IIIB of the Reserve Bank of India Act, 1934. Therefore, we hold that Chapter IIIB of the Reserve Bank of India Act occupy the field with regard to control, penal action, etc., against those companies, and thereby the State law, namely, the Money-Lenders Act, 1946, cannot transgress on the field occupied by the law of Parliament. In view of Section 45Q of the R.B.I. Act, provisions of Chapter IIIB of the R.B.I. Act shall have overriding effect on the Bombay Money Lenders Act, 1946.

We hold that in absence of any notification u/s 2(10)(iia), Non-Banking Financial Companies are not covered by the definition of "money-lenders", and thus, the State Government or its authorities have no jurisdiction to take any regulatory measure or penal measures under the Bombay Money-Lenders Act, 1946.

In view of the aforesaid finding recorded above, while no case is made out to interfere with the common judgment dated 13th January 2010 passed by the learned Single Judge in Special Civil Application No. 13163 of 2008 and analogous cases as challenged in some of the Letters Patent Appeals and Special Civil Applications, learned Single Judge in the other case ought not to have referred the matter to the Registrar to decide the representation. Such order of learned Single Judge dated 14th December 2009 in Special Civil Application No. 13024 of 2009 is set aside. The Letters Patent Appeals and connected Civil Application stand disposed of with the aforesaid observations. Interim relief stands vacated. Notice discharged. No costs.