
(1983) 05 PAT CK 0020
In the Patna High Court
Case No : Civil Revision No. 904 of 1981

Raghubir Prasad

APPELLANT

Vs

Shrimi Narain Tiwari and Others

RESPONDENT

Date of Decision : 05-05-1983

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 6(1A)
Bihar Money Lenders Act, 1974 — Section 1(3), 7(5)

Citation : AIR 1984 Patna 25 : (1983) 31 BLJR 578 : (1983) PLJR 417

Hon'ble Judges : Birendra Prasad Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Birendra Prasad Sinha, J.—The short question which arises for consideration in this case is as to what shall be the date of commencement of an Act if it is not expressly stated in the Act as to on what particular date it will come into operation.

2. The petitioner filed a money suit on 3-7-1975 which was registered as Money Suit No. 251/44 of 1975/78. The suit was ultimately taken up ex parte for hearing and was dismissed by the (learned 4th Additional Munsif, Sasaram, on 19-12-1978 on the ground that mandatory provisions of Section 7(5), Bihar Money Lenders Act, 1974 (hereinafter referred to as "the Act") had been violated. Section 7 (5) of the Act requires that a money lender shall in a suit for recovery of money advanced by him as loan file a copy of the relevant extracts from his register of accounts relating to the said loan and he shall not be entitled to maintain any claim beyond the entries made in his register of accounts. This extract was not filed by the plaintiff and therefore, the learned Munsif dismissed the suit. The petitioner preferred appeal and the same was also dismissed by the learned Third Additional District Judge, Sasaram.

3. Section 1 (3) of the Act states that the Act shall come into force at once. No specific date has been mentioned on which the Act was to come into force.

It appears, the President gave his assent to the Act on the 20-3-1975 and the Act was published in the Bihar Gazette (Extraordinary) dated 25th July, 1975, vide notification No. LG 4.07/74 LEG. 1028 dated 22nd July, 1975. The learned Munsif as well as the lower appellate court have come to the conclusion that the Act came into force on the day it was assented to by the President, i. e. on 20-3-1975.

4. Mr. Gupta, learned counsel appearing on behalf of the petitioner, submits that where no date is mentioned in the Act for its commencement it shall come into force only upon its first publication made in the Gazette. Section 6 (1-A) (ii), Bihar and Orissa General Clauses Act 1917 provides-

"In the case of a Bihar Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the Official Gazette."

Commencement of an Act shall mean the date on which the Act comes into force. Although it is mentioned in the Act that it shall come into force at once, but that word "at once" must be read in the light of Section 6 (1-A) (ii) of the Bihar and Orissa General Clauses Act, mentioned above. The General Clauses" Act specifically requires that the assent of the Governor or the President; as the case may be, has to be published in the official Gazette. The purpose of publication in the official gazette is to make it known to all concerned that an Act has been passed and assented to by the Governor or the president. That being so, it has to be held that the Act came into force only on the date on which the assent of the President was published in the official gazette, i. e., on 25th July. 1975 and not before. I am supported in my view by a decision of the Madras High Court In Re: Kalyanam Veerabhadrayya, in which it was held that the date of publication of the assent in the official gazette should be taken as the date of the commencement of the Act in which no specific date of its commencement was fixed and it was to come into force at once. The Kerala High Court seems to have taken the same view in a case reported in 1960 KLT 1070.

5. Since according to me. the Act came into force only on 25th July. 1975 and the suit having been filed on 3rd July, 1975, the suit cannot be hit by the provisions of Section 7 (5) of the Act. The application is accordingly allowed, the judgments passed by the two courts below are set aside and the case is sent back to the trial court for a decision on merits in accordance with law. There will be no order as to costs.