
(1975) 02 MP CK 0003
In the Madhya Pradesh High Court
Case No : F.A. No.143 Of 1968

Rajaram Baijnath and others

APPELLANT

Vs

Nandkishore Sheobux Rai and others

RESPONDENT

Date of Decision : 26-02-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 3, 3(1), 34, 7, 7(b)
Madhya Pradesh Money Lenders Act, 1934 — Section 2(v), 2(vii), 2(vii)(b), 3, 7

Citation : (1980) ILR (MP) 149 : (1975) JLJ 475 : (1975) MPLJ 419

Hon'ble Judges : S.S. Sharma, J;A.P. Sen, J

Bench : Division Bench

Advocate : M. Adhikari, for the Appellant; B.C. Verma, for the Respondent

Judgement

A.P. Sen, J.

This appeal by the plaintiffs is against the judgment and decree of the 3rd Additional District Judge, Bilaspur dated 25-4-1968 decreeing their suit for the enforcement by sale of the mortgaged property.

The plaintiffs had brought the suit to recover Rs. 1,60,950 being the amount due under the mortgage, Rs. 1,50,000, as principal, and Rs. 10,950, as interest from 1-10-1962 to 18-12 1963. The learned Additional District Judge has, however, adjudged the sum due on the mortgage to be Rs. 70,125, by disallowing the entire interest including a sum of Rs. 79,875 paid by way of interest upto 1-10-1962 and adjusting the same towards the principal amount under clauses (b) and (c) of section 7 of the Madhya Pradesh Money-lenders Act, 1934 (hereinafter referred to as "the Act").

The facts are not in dispute. By a deed of settlement dated 13-5-1946, Ex. P-64, the trust known as "Seth Kirodimal Charity Trust", Raigarh was created. The settler Seth Kirodimal made over a sum of Rs. 30,00,000 to the Board of Trustees constituting himself to be its Chairman, to hold upon the trust and for the purposes mentioned therein. The trust was registered as a public trust under

the Madhya Pradesh Public Trusts Act, 1951, and was a trust for charitable purposes i.e. establishment and maintaining of hospitals, medical colleges, etc. The trustees by clause 5 of the deed, Ex. P-64, were empowered to make investments of the trust's funds. Clause 5, so far as relevant, reads:

5. The Trustees may invest the Trust Fund either in the purchase of mortgage of immoveable properties or in such investments, whether authorised by the Indian Trust Act, 1882 or not, or in deposits with or loans to any Company, Bank, person or firm including the firm in which the Trustees or any or them may be directly or indirectly interested and on such terms as to interest as the Trustees may think proper with power to the Trustees to alter, vary or transpose such investments from time to time in such manner, they may in their absolute discretion think fit, for others of the same or of a like or different nature.

The defendant No. 1 Nandkishore and his father Seth Sheobux Rai, since deceased, borrowed from Seth Kirodimal, a sum of Rs. 1,50,000 on 18-11-1953 at Bilaspur for payment of their antecedent debts amounting to Rs. three lacs and odd due on 7-11-1953 corresponding to Diwali Samvat 2010 to M/s Paluram Dhanania, Raigarh, a joint family business of which Seth Paluram, the munim of Seth Kirodimal and a member of the Board of Trustees, was the karta. It appears that a telephonic message was received from Seth Sheobux Rai by Seth Kirodimal and he sent the amount of Rs. 1,50,000 through Mangiram (P.W. 2), munim of M/s Paluram Dhanania. The defendant No. 1 Nandkishore and his father Sheobux Rai, thereupon jointly executed the mortgage deed dated 18-11-1953, Ex. P-63, mortgaging their Flour and Dal Mills known as "Shri Krishna Rice Mills", Bilaspur as a security for repayment of the loan. On 20-11-1953, they repaid Rs. 1,50,000 to M/s Paluram Dhanania as per rokad, Ex. P-106. The mortgage amount was, therefore, borrowed by them to repay the debt of Seth Paluram. Incidentally, the application for registration, Ex. D-1, shows that Bhagiraih Lal Gupta son of Seth Paluram became a partner of the firm Shri Krishna Rice Mills w. e. f. 7-11-1953.

The defendant No. 1 Nandkishore and his father Sheobux Rai by the mortgage bond, Ex-P-63, covenanted to pay interest at 6% per annum, annually. If there was any default in payment, the interest due was to be added to the principal at the end of each year. The due date for repayment of the loan was 18-11-1963. By a subsequent deed dated 6-1-1954, Ex-P-104, the parties stipulated that the interest shall be payable by half-yearly installments, and so long the interest was paid, the trustees would not make a demand for payment of the principal, with a further condition that on default of two consecutive installments, the amount due on the mortgage shall become exigible. Admittedly, the mortgagors regularly paid the interest due on the loan till 1-10-1962, amounting to Rs. 79,875. Thereafter they having defaulted in payment of interest, and the mortgage amount having become due, the trustees by their notice dated 25-11-1963, Ex-D-11, made a demand for repayment. The mortgagors having failed to comply with the notice of demand, the trustees brought the suit on 7-11-1964 for

recovery of the amount due under the mortgage by sale of the mortgaged property.

The learned Additional District Judge no doubt decreed the plaintiffs' suit on the mortgage, but upheld the defendants' plea that the plaintiffs not having complied with the requirements of clauses (a) and (b) of sub-section (1) of section 3 of the Act, the whole of the interest found due i. e. including the sum of Rs. 79,875 paid as interest, should be disallowed and the same adjusted towards the principal following the view of this Court in AIR 1949 31 (Nagpur) Nag. 31 : I L R 1948 Nag. 203, and Shrikishan v. Mahadeo 1959 M P L J 50, He accordingly passed a decree only for Rs. 70,125, the remaining amount of the principal, and also disallowed costs.

In appeal, the counsel for the appellants challenged the correctness of the decisions in *Tulsiram Ramdayal v. Badriprasad Jankiprasad* (supra) and *Shrikishan v. Mahadeo* (supra) and contended that the Court had no power u/s 7 of the Act to reopen the transaction if there was any failure on the part of the plaintiffs to maintain any account of the loan, or to furnish the defendants with any statement of accounts, as required by clauses (a) and (b) of section 3 (1) of the Act, on the ground that the word "due" in clause (b) can only mean payable and, therefore, the Court could only disallow the whole or any portion of the interest claimed in suit and not amounts paid and appropriated towards the interest. This result, it was urged, must follow due to absence of any express provision enabling reopening of accounts. The Bench, hearing the appeal, upheld the contention and accordingly referred the matter to a Full Bench for reconsideration of the decisions in *Tulsiram Ramdayal v. Badriprasad Jankiprasad* (supra) and *Shrikishan v. Mahadeo* (supra). The Full Bench has now by majority negatived the contention of the learned Counsel for the appellants and held that the correctness of the decisions in *Tuhiram Ramdayal v. Badriprasad Jankiprasad* (supra) and *Shrikishan v. Mahadeo* (supra) is not open to question and, therefore, the Court had the power u/s 7 of the Act to reopen the account so as to traverse the entire period from the date of the loan to the date of the suit and to disallow the whole or any interest found due on the principal. The appeal was, therefore, placed for hearing on merits.

The learned counsel for the appellants has mainly urged two contentions first, the trust not being a person, does not fall within the definition of a "money-lender" as defined in section 2(v) of the Act, alternatively, the trustees were not engaged in any business of money lending. There were only three transactions effected on 18-11-1953: (i) Rs. 1,50,000 advanced to defendant No. 1 Nandkishore and his father Sheobux Rai under the mortgage, Ex. P-63, (ii) Rs. 1,50,000 to Seth Paluram, one of the trustees, (iii) Rs. 2,00,000 to "Nirbheram, another trustee, which were in the nature of a mere accommodation and not a loan in the strict sense of the term, and such casual loans advanced to friends and acquaintances would not make the plaintiffs money lenders; and secondly, the amount of Rs. 1,50,000 advanced under the mortgage deed, Ex. P-63, was

not a loan within the meaning of section 2 (vii) of the Act, as it fell under the exemption clause (b) thereof.

The substantial question is whether the trust, or the plaintiffs who are the trustees, come within the definition of the term "money-lender" contained in section 2 (v) of the Act and whether the loan in question was made in the regular course of business of money-lending.

A "money-lender" is defined in section 2 (v) in these terms:

2. (v) "moneylender" means a person who, in the regular course of business advances a loan as defined in this Act and shall include, subject to the provisions of section 3, the legal representatives and the successor in interest whether by inheritance, assignment or otherwise of the person who advanced the loan and moneylending shall be construed accordingly.

The business of moneylending imports a notion of system, repetition and continuity. The fact that a person carries out isolated transactions of a particular kind does not mean that he carries on business of such a kind. A man, therefore, does not become a money-lender by reason of occasional loans to relations, friends or acquaintances, nor does he become a money-lender merely because on one or several isolated occasions he may lend money to strangers. There must be more than occasional or disconnected loans to justify a finding that the plaintiff is a money-lender. The question to be decided in the appeal, therefore, is whether the plaintiffs, or the trust, are money-lenders in the strict sense of the term, as defined in section 2 (v) of the Act.

The question whether or not a person carries on the business of moneylending has been considered on occasions more than one. In his classical judgment in *Eagelow v. MacElwee* L R (1918) 1 K B 205, McCardie, J. observed:--

A man does not become a money-lender by reason of occasional loans to relations, friends, or acquaintances, whether interest be charged or not. Charity and kindness are not the bases of usury. Nor does a man become a money-lender merely because he may upon one or several isolated occasions lend money to a stranger. There must be more than occasional and disconnected loans. There must be a business of money-lending, and the word "business" imports the notion of system, repetition, and continuity: See *Newton v. Pyke* (1908) 25 TL R 127..... The line of demarcation cannot be defined with closeness or indicated by any specific formula. Each case must depend on its own peculiar features. It is ever a question of degree.

The dictum of McCardie, J. has throughout been followed in England and by the Courts here. A similar view was taken by Vivian Bose, J. dealing with section 2 (v) of the Act, in *Sitaram Shrawan v. Bajya Parnya* 1941 N L J 194 = A I R 1941 Nag. 177, stating that an isolated act of money-lending is not moneylending in regular course of business. This decision of Vivian Bose, J. has consistently been followed and their Lordships of the Supreme Court have now given to it their seal

of imprimature, while they were dealing with section 2 (v) of the Act, in *Gajnan and Others Vs. Seth Brindaban*, , stating:

There is a long catena of authorities on the statutes regulating and controlling money-lenders in which the expression "money-lender" has been so construed as to exclude related transaction or transactions of money-lending. Vivian Bose J. while dealing with the Act which concerns us, in *Sitaram Shrawan v. Bajya Parnya* (supra) said:

The word "regular" shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of money-lending is shown to the Court it is impossible to state that that constitutes a regular course of business. It is an act of business, but not necessarily an act done in the regular course of business.

Thus not every man who lends money at interest carries on the business of moneylending. Speaking generally a man who carries on a money-lending business who is ready and willing to lend money to all and sundry, provided that they are from his point of view eligible. We do not, of course, mean to say that a moneylender can evade the Act by limiting his clientele to those whom he chooses to designate as "friends" or otherwise, as observed by Farwell, J. in *Litchfield v. Dreyfus* L R (1906) 1 K B 584. It is, therefore, a question of fact in each case whether a person was really carrying on the business of moneylending as a business, or was merely lending money as an incident of another business or to a few old friends by way of friendship.

It would not be out of place to notice the following observations of Iqbal Ahmad, J. in *In re Bhairo Dutt Bhandari* I L R 1940 All. 60 (S B), which are rather pertinent:

""Investment of his savings by an advocate do not necessarily amount to engagement in money-lending business, the more so when such investments are few and far between and are mostly made to relations and friends. But if investments by way of loan are made as a matter of regular business, and not merely on a few isolated occasions, such investments will constitute engagement in money lending business. An element of system, habit and continuity is essential to constitute the exercise of a trade or business. Where it is found that money-lending transactions by an advocate are numerous, continuous and systematic, the advocate must be held to have entered into money lending business

In the present case, the plaintiffs' own evidence clearly establishes that the plaintiffs as trustees of Seth Kirodimal Charity Trust regularly advanced money to various persons by way of loans. These loans were not a matter of mere accommodation to friends or acquaintances, nor are they isolated or casual loans. Clause 5 of the trust deed. Ex. P-64, in express terms confers powers on the trustees to make investments of the trust funds in the purchase or mortgage of immoveable properties, or in such investments in deposits with, or loans to

any Company, Bank, person or firm, including the firm in which the trustees or any one of them may be directly or indirectly interested, on such terms as to interest as they may think proper. By virtue of the power, they had over a period of years made several advances to various persons. If investments by way of loan are made as a matter of regular business and for gain, there can be no escape from the conclusion that such investments constitute engagement in moneylending business.

Ganpat Rai Gupta (P. W. 3), Secretary of the trust clearly admits that money belonging to the trust is advanced by way of loan on interest to others. No doubt, he asserts that the trust carries on no business, and the advances are made by way of investments. The fact, however, remains that there is system, repetition and continuity in the dealings of the trust. During his cross-examination, he was confronted with the minutes of the Board of Trustees, and had to admit that loans were advanced prior to the year 1953 to the various persons mentioned therein. Bhagirath Lal Gupta (P. W. 6), one of the trustees and the son of Seth Paluram, while asserting that the trust is not engaged in the business of money-lending, admits that the trust advances loans to well-to-do persons and that--

Though he disavows knowledge whether regular accounts were submitted by the trust to the Court of the District Judge, he had to admit that the trust issues printed receipts to the debtors towards payment of interest. This witness further admits that the mortgage amount of Rs. 1,50,000 was borrowed for repayment of loans of Rs. 80,000 due to his firm M/s Paluram Dhanania, and Rs. 70,000 to M/s Bhagirath Gupta & Company, both of which hold money-lending licences and they are engaged in the business of moneylending. Mangiram (P. W. 2), the munim of M/s Paluram Dhanania in his cross-examination, was unable to say if Seth Kirodimal had any other business or moneylending except that carried in the name of the trust. He, however, admits that the income of the trust is from moneylending and house rent. He further admits that the trust is engaged in the business of advancing loans to others. He also admits that several businessmen belonging to Marwari community both at Raigarh and Bilaspur used to borrow money from the trust on interest. In view of all this evidence, the learned Additional District Judge was right in holding that the plaintiffs were engaged in moneylending business and we affirm the finding.

There can be no doubt that the trust is not a person and, therefore, does not come within the definition of the term "money-lender" as contained in section 2 (v) of the Act, but the trustees acting as such undoubtedly are money-lenders. As stated in Paton's Jurisprudence, 3rd Ed., p. 480, the trust has served in many fields: behind the "hedge of trustees" a community life may flourish under a trust, and the problem of endowments and of gifts for charitable and religious purposes is made easy, for the property may be vested in the trustees for such purposes as the settler desires. That precisely is the case here.

A trust even though registered as a public trust under the Madhya Pradesh Public Trusts Act, 1951 has no corporate personality. The trust may not engage in

juristic acts, sue and be sued. The grant of legal personality is clearly within the gift of the State. In *Laxman Prasad v. Shrideo Janki Raman* 1973 M P L J 842 I had observed:

The Trust admittedly is a Public Trust, and the suit could have been instituted in its name if there was a provision in the M. P. Public Trusts Act enabling a Public Trust to sue in its name. Perhaps, the plaintiff felt that in the absence of such a provision the suit had to be brought in his own name. In making that assumption, the plaintiff committed an honest mistake. The suit had to be brought under Order 1, rule 8 or in the name of the co-trustees as in the case of a private trust.

There is obviously a lacuna in the M. P. Public Trusts Act in that unlike other enactments, it nowhere provides that upon registration of a Public Trust under the provisions of the Act, the Trust will have a legal personality, capable of instituting and defending suits and other legal proceedings in its name.....".

That decision lays down that a suit for the enforcement of rights on behalf of a public trust, has to be brought by all the trustees acting together. Such a suit may, however, be brought by one trustee with the sanction and approval of his co-trustees, but such sanction or approval must be strictly proved.

For reasons already stated earlier, it must be held that a trust registered as a public trust under the Madhya Pradesh Public Trusts Act, 1951 engaged in the business of moneylending comes within the purview of the Madhya Pradesh Moneylenders Act, 1934 and must comply with the requirements of the Act.

The second question still remains. The question is whether the transaction is not a loan within the meaning of section 2 (vii) of the Act, which reads:--

2. (vii) "Loan" means an actual advance made within twelve years from the date of last transaction whether of money or in kind at interest and shall include any transaction, which the Court finds to be in substance a loan, but shall not include;

(a) a deposit of money or other property in a Government post office, bank or any other bank or in a company or with a co-operative society;

(b) a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment;

(c) a loan advanced by any Government or by any local authority authorised by any Government;

(d) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act, 1913;

(e) an advance made on the basis of a Negotiable instrument as defined in the Negotiable Instruments Act, 1881 other than a promissory note;

(f) a transaction which is a charge created by operation of law on, or is in

substance a sale of, immovable property;

(g) a loan advanced to an agricultural labourer by his employer.

It is common ground that clauses (a) and (c) to (g) do not apply; and the question is, whether clause (b) applies. It is urged that the trust being registered under the Madhya Pradesh Public Trusts Act, 1951, the loan comes within the exemption clause (b). Emphasis is laid on the words "any other enactment". The fallacy in the argument is apparent. The trust is not a society or association clause (b), therefore, in terms does not apply. It refers to a loan advanced by any society or association registered under the Societies Registration Act, 1860, or under any other enactment. The words "any other enactment" obviously refer to an enactment for the registration of such society or association. The trust is certainly not a society and it cannot also be an association. That is because the trustees of their own volition cannot form themselves into an association qua the trust. The trustees are a creation of the settler, and not a voluntary organisation like a club in co-ownership.

In *Laxminarayan Narayandas v. Deo Radha Ballabh Jagan Baldeo* rust 1961 M P L J 1184, Shiv Dayal J., while negating a similar contention, observed:-

The exemption provided in this clause is only for a society or an association and it must be registered under the Societies Registration Act or any other enactment which is analogous to the last mentioned Act. The words "any other enactment" must be read ejusdem generis. Moreover, a Trust is neither a society nor an association. As such a Trust, although registered under the Public Trusts Act, is not exempt from the operation of section 2 (vii)(b) of the C. P. and Berar Moneylenders Act.

The correctness of this decision has, however, been strenuously assailed on the ground that the rule of ejusdem generis cannot apply to the construction of the word "any other enactment" appearing in clause (b), for want of a genus.

Words are meaningless in isolation, and their context must always be taken into account. Hence the well known rule of ejusdem generis i.e. that when "general words" are used in a summarizing or comprehensive manner, they must be taken as referring only to those kinds of things with which the context deals explicitly or implicitly, (See Allen's Law in the Making, 7th Edn., 490). The ejusdem generis rule is not a rule of law, but is merely a rule of construction to aid the Courts to find out the true intention of the legislature. The scope of the ejusdem generis rule has recently been considered by their Lordships in *Jage Ram and Others Vs. State of Haryana and Others*, They rely on the following statement in Halsbury Laws of England (3rd Edn.) Vol. 36 p. 397 paragraph 599;

For the ejusdem rule to apply, the specific words must constitute a category, class or genus; if they do constitute such a category, class or genus, then only things which belong to that category class or genus fail within the general words.....

They also rely on the observation in *Craies on Statute Law* (6th Edn.) p. 181 to the effect:

To invoke the application of the *ejusdem generis* rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects.

Bearing in mind the principles laid down by their Lordships, there can be no doubt that the general import of the words "any other enactment" in clause (b) of section 2 (vii) of the Act should be confined to things of the same kind as those specified. Such a restricted meaning to these words must be given because the context of the whole scheme of the Act so requires. The legislative intent is clear, and there is really no occasion to call into aid the *ejusdem generis* rule. Clauses (a) to (g) deal with different categories of loans which are exempted from the definition of the term "loan" as contained in section 2 (vii) . clause (b) deals with one of the categories i.e. a loan advanced by a society or association. The exemption under clause (b) comes into play if two conditions are satisfied, it must be a loan to or by or a deposit with society or association and (ii) such society or association must be registered under the Societies Registration Act, 1860 or under any other enactment The words "any other enactment" cannot, therefore, be read in isolation. Condition (ii) refers to the registration of the society or association. The trust not being a society or association condition (i) is not attracted and, therefore there is no question of condition (ii) being brought into play.

It must accordingly be held that the mere fact that the loan was advanced by the plaintiffs as trustees of a trust registered as a public trust under the Madhya Pradesh Public Trusts Act, 1951 would not, by the fact of such registration alone, exempt the loan from the definition of "loan" as contained in section 2 (vii) and, therefore, the plaintiffs were bound to comply with the requirements of the Madhya Pradesh Money-Lenders Act, 1934.

The learned Additional District Judge is, however, wrong in disallowing to the plaintiffs interest pendente lite on the principal sum adjudged due i.e. on Rs. 70, 125/-under section 34 of the CPC There was no justification to deprive the plaintiffs of such interest having regard to the fact that they are trustees of a charitable public trust. The law on the subject is clear. Under Order 34, rule 4 of the Code, it is the Court's duty when passing a preliminary decree for sale to adjudicate upon the respective rights and liabilities of the parties to the suit. Under sub-rule (1) thereof, in a suit for sale if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, Ordinarily, the Court has no discretion in the matter of interest, and interest is to be awarded at the contractual rate upto the date fixed for redemption. Section 7 of the Act, however, prohibits the award of interest in certain cases. If the Court finds that the plaintiffs is a money-lender, and that he has not complied with the provisions of clauses (a) and (b) of sub-

section (1) of section 3 of the Act, it may u/s 7 (b) , in case of non-compliance of clause (a) of section 3 (1) . disallow the whole or any portion of the interest found due as may seem reasonable to it in the circumstances of the case, and may also disallow costs. The Court has, therefore, discretion in the matter when the provisions of clause (a) of section 3 (1) have not been complied with. In case of non-compliance of clause (b) of section 3 (1) , however, the Court has no such discretion it must u/s 7 (c) exclude every period for which the money-lender had failed to furnish account as required by clause (b) of section 3 (1) , subject to the proviso to section 7.

In the present case the plaintiffs have admittedly failed to comply with the requirements of clauses (a) and (b) of section 3 (1) of the Act. The learned Additional District Judge was, therefore, right in disallowing the whole of the interest till the date of institution of the suit. The prohibition contained in section 7 of the Act does not, however, prevent the Court from awarding interest in respect of two periods (i) from the date of suit up to the date of redemption and (ii) thereafter till realisation.

24, In *Sunder Koer v. Rai Sham Krishan* I L R 34 Cal. 150 (P. C.), their Lordships of the Privy Council observed, with reference to the date fixed for payment:

after the expiration of that day, if the property should not be redeemed, the matter should pass from the domain of contract to that of judgment, and the rights of the mortgagee should thenceforth depend, not on the contents of his bond, but on the directions in the decree.

There can be no doubt that section 34 of the Code applies to mortgage decrees as laid down by their Lordships of the Privy Council in *Kasum Kumari v. Debi Prasad Dhandhanian and others* The learned Additional District Judge should have, therefore, allowed interest pendente lite at the rate of 6% per annum on the sum adjudged due i.e. on Rs. 70,125/- from the date of suit upto the date of redemption. In addition he should also have made a direction in terms of Order 34, rule 11 (a) (i) of the Code, for payment of interest at the same rate thereafter i.e. from the date fixed for redemption upto the date of realisation or actual payment, on the aggregate sum due. See *Soli Pestonji Majoo v. Ganga Dhar Khemka and K. Manick Chand and others v. Elias Saleh Mohamed Sait and others*

The result, therefore, is that the appeal must partly succeed and is allowed with costs. The judgment and decree of the Additional District Judge are modified and instead, we direct that a preliminary decree for sale be drawn in favour of the plaintiffs-mortgagees under Order 34, rule 4 (4) of the Code of Civil Procedure, declaring that they shall be entitled to recover an amount of Rs. 70,125/-, towards principal, on the foot of the mortgage dated 18-11-1953, with interest thereon at the rate of 6% per annum from 7-1-64, i.e. the date of institution of the suit to the date fixed for payment, as also to future interest on the aggregate sum due i.e. principal, interest and costs, from the date fixed for payment till the

date of realisation. Counsel's fee, as per schedule or certificate, whichever is less, in proportion to success.