(1981) 12 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Second Appeal No. 218 of 1981

Ram Chandra APPELLANT

Vs

Prabhu Lal RESPONDENT

Date of Decision : 18-12-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Rajasthan Money Lenders Act, 1963 — Section 11, 22, 23, 26

Citation : AIR 1982 Raj 212 : (1981) WLN 607

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : H.C. Rastogi, for the Appellant;

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—This is a second appeal in a civil suit which has been dismissed by both the courts below on the precise ground of non-compliance of the Rajasthan Money Lenders Act, 1968.

2. Mr. Rastogi, learned counsel for the appellant has submitted that Section 26(b) of the Money Lenders Act as amended in 1976 cannot be applied to the case, which was already pending. According to him, this will be giving retrospective operation which cannot be given, because it would result in divesting him of the vested rights in a decree in a civil suit. Mr. Rastogi''s contention is that the rights of the parties should be decided in accordance with law on the date of filing of the civil suit and not according to law which comes into force later on. This point has precisely been considered by this court in Kanhiyalal v. Srilal 1980 RLW 301, in which the learned Judge of this Court observed as under :--

"Rajasthan Money Lenders Act -- As introduced by amending Act, Section 26 (b) --Whether retrospective suit, in amended Section 26 (b) of the Act, embraces within its ambit even the pending suits. It can, therefore, be said, that keeping in view the ''purpose or object'' or the ''reasons and spirit'' of the Act, the provisions of Section 26 (b) of the Act as they stand after the amendment by the amending Act of 1976, will apply to pending suits also and if Sections 22 and 23 have not been complied with, then the court has to dismiss the suit."

3. Again, another Judge of this Court took the same view in Ranchordas v. Matookchand 1980 WLN 580 : AIR 1981 NOC 72. The learned Judge observed as under:--

"The intention of the legislature has been clearly and undoubtedly expressed that the amended Section 26 (b) is to apply to the pending suits. It is enjoined that the Court shall dismiss the whole suit where it finds that the provisions of Sections 22 and 23 of the Act have not been complied with by the Money-lender, in respect of the whole claim."

4. While doing so in Ranchordas''s case, the learned Judge extracted the statement of objects and reasons of the amendment. Reliance was placed on another judgment of this Court in Smt. Kishan Pyari Vs. Smt. Shanti Devi, in Ranchordas''s case. The learned Judge was of the view that the law is well settled and it is not necessary to quote any authority on this point.

5. In Kanahiyalal''s case 1980 RLW 301 (supra) the learned Judge considered the decision of Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha, and after taking guidance from the principles, examined the amending Act by which Section 26 (b) was substituted.

6. An express reference was made that by this amendment two sections were amended, and they are 11 and 26. Whereas in Section 11 the legislature expressly provided an exception of its application to those cases pending, but no such exception was carved out in Section 26 (b). When the legislature acts at a particular point of time in legislation two provisions in the same Act, and in one retrospective effect is avoided by making an exception and in the other drastic consequences are contemplated by not enacting such an explanation, or exception, this court while interpreting the law Jigs got no option but to respect the wishes of the legislature, though seemingly it may create hardship to those moneylenders who have already filed their suite and were not aware of the drastic consequences of non-compliance of the sections of the Act. Such an intention of the legislature cannot be challenged un-less it lacks any legislative authority or becomes violative of any of the provisions of the Constitution. Obviously, none of the two contingencies, contemplated have been shown to exist, as there is no challenge to plenary authority, nor there is any violation of the constitutional provisions. That being so, I have got no hesitation in holding that the view taken by this Court in the two cases above requires no reconsideration for review.

7. Mr. Rastogi pointed out that the general principles of the statute is that the statute should be treated prospective and not retrospective, and this is more so when the provisions are penal in nature. There cannot be any dispute about this

principle of law which is well settled, However, as discussed above, it all depends upon the scheme of the Act, intention to enact a particular statute and merely on the basis of generalisation when expressly by providing contra-language in Section. 11 in contrast to Section 26 (b), the legislature expresses its intention, this Court cannot infer to the contrary. In this view of the matter, it is not necessary to discuss the various authorities submitted by Mr. Rastogi on the general principle of statutes.

8. The second limb of submission of Mr. Rastogi is that the original debt was of 1967, but the accounts were taken and a new document was executed in 1973, and the suit is based on this new document. Mr. Rastogi pointed out that even if it is assumed that the provisions of Section 26 (b) apply and on account of that other provisions of the Money-lenders Act will have their effect, then also he has not committed any violation of any other provisions of the Money Lenders Act.

9. A perusal of the finding of the trial Court shows that Issue No. 4 was decided against the plaintiff. Issue No, 4 reads? as under:--

^^D;k okfn us _u ds lEcU/k esa lkgwdkjh izkf/kfu;e dh /kkjkvksa ds vulkj le;≤ ij izfroknh dks fooj.k izLrqr fd;sa gSa A ;fn ugha rks bldk okn ij D;k izHkko gksxk-**

In the first appellate Court certain documents were sought to be produced under Order 41, Rule 27, C. P. C. The first appellate Court has considered the implications of those documents, and then held that these documents cannot save the plaintiff from the drastic consequence of dismissal inasmuch as they relate to the years 1974, 1975 and 1976. It was then held that in the documents of 1975 and 1976, the rate of interest has not been shown, nor any payments have been adjusted. It was further pointed out that it has not been showing compliance of Sections 22 and 23, that any statement of accounts was sent to the latter. On these findings the first appellate court after examining the document submitted by the plaintiff has held that Sections 22 and 23 have not been complied with. I am in agreement with the view taken by the first appellate Court and hold that the finding about non-compliance of Sections 22 & 23 does not call for any interference, and the appeal deserves to be dismissed

10. It is true that the present case is a case in which it has been proved that money was advanced and the documents were executed and even then suit has been dismissed. However, the remedy for this lies by an appeal to the legislature and not in this Court.

The appeal is, therefore, dismissed without any order as to costs. In view of the special features of this case, 3/4th of the court-fees shall be refunded under the provisions of the Rajasthan Court-fees" and Suits Valuation Act to Mr. Rastogi.

