(1967) 07 PAT CK 0001

In the Patna High Court

Case No : F.A. No. 544 of 1961

Shyam Kishore Prasad Singh and Others — APPELLANT

Vs

Harikant Prasad Singh @ Markandey Prasad Singh — RESPONDENT

Date of Decision : 21-07-1967

Acts Referred:
Bihar Money Lenders (Regulation of Transactions) Act, 1939 — Section 6, 7, 8

Citation : (1968) 16 BLJR 423

Hon'ble Judges : Tarkeshwar Nath, J;B.P. Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tarkeshwar Nath, J.

1.This appeal by defendants 1 to 3 arises out of a money suit for recovery of a sum of Rs. 12,446/- being the amount of principal and interest due on a promissory note dated the 16th October, 1955 executed by defendant No. 1 in favour of the plaintiff. This handnote was for a sum of Rs. 10,591/-, and defendant No. 1 had agreed to pay interest at the rate of -/8/- per hundred per mensem.

2. It appears that this hand-note was executed in respect of the past liability and the first handnote executed by defendant No. 1 as karta and manager of the joint family consisting of defendants 1 to 5 (defendants first party) on the 22nd April, 1944 was in favour of the plaintiff and the husband of defendant No. 6 (defendant second party) for a sum of Rs. 5,900/-, which was advanced in cash. The defendants first party were unable to pay anything either towards the principal or interest, and, hence defendant No. 1 renewed the said hand-note and executed another hand-note on the 22nd March, 1947 for a sum of Rs. 6,674/6/-. There was another renewal of the handnote by executing a handnote on the 17th February, 1950 for a sum of Rs. 7,551. Defendant No. 1 again renewed this handnote by executing another handnote on the 9th December,

1952, for a sum of Rs. 9,041/- including Rs. 215/- advanced in cash and, the last handnote was executed by him on the 16th October, 1955 for a sum of Rs. 10,591/- which is the basis of the suit. The plaintiff by an arrangement between himself and the defendant second party got the right to realise this debt, and, hence, he instituted the money suit on the 29th September, 1958, claiming Rs. 10,591/- as the principal amount due besides Rs. 1,855/- as interest from the 16th October, 1955 to the 25th September, 1958. The total claim thus was Rs. 12,446/-.

3. Defendant No. 1 did not contest the suit, but there was one written statement on behalf of defendants 2 and 3, and the other one was on behalf of the minor defendants 4 and 5. It may be mentioned that defendants 2 and 3 are the sons of defendant No. 1, whereas defendant No. 4 is the son of defendant No. 2, and defendant No. 5 is the son of defendant No. 3. The defendants challenged the validity and genuineness of the handnote in suit and alleged that no consideration had passed. It is unnecessary to go in detail into the various defences taken by them except mentioning the one which is relevant for the purpose of this appeal as that alone has been pressed by learned Counsel for the appellants. That defence was that the plaintiff was not entitled to realise the compound interest in the present suit.

4. The Additional Subordinate Judge held that the handnote in suit was valid, genuine and for consideration, and the defendants first party were liable for the payment of the dues. As regards interest, he took the view that the defendants were not entitled to any relief as the provisions of either Section 6 or Section 7 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939 were not applicable to the facts and circumstances of the present case. In this view of the matter, he decreed the suit on contest against defendants 2 and 3 and ex parte against defendants 1, 4 and 5 allowing interest Pendente lite at 6 per cent per annum and future at 4 per cent per annum. Being aggrieved by this decree, defendants 1 to 3 have filed this appeal, and they have valued it at Rs. 1,913/- only. This valuation was given on the footing that the plaintiff is not entitled to realise compound interest and this sum represents the amount of compound interest.

5. Learned Counsel for the appellants fairly conceded that he could not bring the case of the appellants within the purview of Section 8 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939 (hereinafter referred to as ''the Money Lenders Act'' for the sake of brevity), but he pressed that the defendants were entitled to relief u/s 6 of the said Act. Section 6 reads thus:

Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, an agreement entered into by a debtor for the payment of compound interest on loans advanced after the commencement of this Act shall be void.

6. Learned Counsel placed before us the various handnotes dated the 22nd April,

1944, 22nd March, 1947, 17th February, 1950, 9th December, 1952 and 16th October, 1955 (Exts. 1, 1/a, 1/b, 1/c, and 1/d respectively) and pointed out that each time the handnote were renewed in respect of the amount of principal and the interest which had accrued on the principal sum. In other words, the last handnote dated the 16th October, 1955 (Ext. 1/d) was in respect of Rs. 9,041/- as principal and Rs. 1,550/- as interest. The total came to Rs. 10,591/-, and that was mentioned in Ext, 1 (d). Defendant No. 1 had agreed to pay interest on the sum of Rs. 10,591/-at the rate of -/8/- per hundred per mensem. The argument was that as the total amount mentioned in Ext. 1(d) included the amount of interest as well, therefore the agreement to pay interest on the amount of interest was void in accordance with the provisions of Section 6 of the Money Lenders Act.

7. Learned Counsel for the plaintiff-respondent urged that although the handnote (Ext. 1/d) was executed in respect of the past liability, the entire amount of Rs. 10,591 should be deemed to be the loan as defined in Section 2(f) of the said Act. In support of this contention, he referred to a decision in AIR 1940 60 (Privy Council) and the relevant observations are these:

Their Lordships are of opinion, where a loan has been incurred for interest and this interest is added to the amount agreed to be due when a new transaction is agreed between the parties which includes the payment of interest as an acknowledged debt this is not in principle open to any sound objection. As one member of this Board, when sitting in the Court of Appeal, pointed out in Lyle v. Chappel (1932) 1 K.B. 691, it ought not to make any difference to the validity of a transaction by way of a renewal of a loan, whether the parties go through the form of payment by the borrower of the whole amount due and a re-lending of the same amount by the money-lender, or the transaction is carried out without any such payment by treating the amount of principal and interest still due as a debt acknowledged by the borrower together with an undertaking by the borrower to pay the amount of the agreed debt.

He further referred to the case of Lal Singh Vs. Ramnarain Ram and Others, . The suit giving rise to that appeal was for recovery of the amount due to the plaintiffs on a handnote dated the 1st January 1935, executed by the appellant in favour of the plaintiff-respondents. The argument there was that the plaintiffs were entitled to a decree for a much smaller sum., namely, about Rs. 1,663/11/6 only, and reliance was placed upon the provisions of Section 7 of the Money Lenders Act. The Subordinate Judge had held that the loan in that case must be taken to be Rs. 2,909/8/-which was the amount for which the handnote in question was executed and not Rs. 1,000/- which was the original sum advanced upon the handnote of the 12th January, 1924. In that case as well, the liability under the original handnote was altered by the appellant by executing fresh handnotes after the accounts had been adjusted between him and the plaintiffs. It was held that even if the provisions of the Money Lenders Act were applicable, the provisions of Section 7 were correctly construed by the learned Additional

Subordinate Judge inasmuch as the loan in that case was based on the handnote dated the 1st January, 1935 and the amount mentioned in that handnote could be well considered to be the amount of loan advanced. This decision, however, related to the provisions of Section 7 of the Money Lenders Act. I would refer to a decision of the Supreme Court in Ramnandan Prasad Narayan Singh Vs. Mahanth Kapildeo Ram Jee and Another, which also has been relied upon by learned Counsel for the plaintiff-respondent. In that case, the original loan of Rs. 40,000/- was advanced as early as the 11th January, 1895. The appellants there contended that for the purpose of calculating the interest to be decreed prior to the date of the suit, the loan advanced must be taken to be the original sum and that if an account were to be taken of all the sums received by the creditor as interest from that date up to the date of the suit, there would be nothing due for interest. On the other hand, the decree-holder urged that having regard to the latter part of Section 7, the loan must be taken to be the amount mentioned in the mortgage bond dated the 6th October, 1931, namely, Rs. 42,000/-. Dealing with the respective contentions, their Lordships observed as follows:

The point came up expressly for decision in Singeshwar Singh v. Medni Prasad AIR (27) 1940 Pat. 65 : 187 I.C. 339, where a mortgage bond was executed on 31-8-1922 for a sum of Rs. 2,000/- which was the balance of the principal and interest due under a mortgage bond of the 11-10-1912, for Rs. 1,391. The judgment-debtors raised the plea that the court should go back to the earlier bond of 1912 and that as a sum of Rs. 1,512 had been paid as and by way of interest towards that bond, no decree could be passed against them for more than the principal sum of Rs. 1391. The learned Judges rejected this contention and took the amount stated in the document of 1922, namely, Rs. 2,000 as the loan & they held that the plaintiffs were entitled to get a decree for interest for a sum not larger than Rs. 2,000 as no payment had been proved to have been made after the execution of the bond. The same view was taken in Lal Singh Vs. Ramnarain Ram and Others, & the pltfs. were awarded a decree on the basis that the loan was to be taken as Rs. 2,909-8-0 which was the amount for which the handnote sued upon was executed & not Rs. 1,000 which was the original amount advanced upon an earlier hand-note of the year 1924. The case reported in Madho Prasad v. Mukutdhari Singh AIR (28) 1941 Pat. 378 : 193 I.C. 661, lays down the same position. The F.B. decision in Deo Nundan Prasad v. Ram Prasad 23 Pat. 618 : AIR (31) 1914 Pat 303 (F.B.), reiterates the same view, pointing out the distinction between Sections 7 and 8 of the Act & stating that while u/s 8 we can go to the original loan in spite of a later document, u/s 7 the loan must relate to the document on which the suit is based, that is, the final document & not the original one. In each one of these cases, the question of the true meaning of Section 7 was pointedly considered." In this decision also, the provisions of Section 7 of the Money Lenders Act came to be considered but not the provisions of Section 6 on which learned Counsel for the appellants has placed reliance.

8. Learned Counsel for the plaintiff-respondent referred to a decision in Jiwanlal

Achariya v. Rameshwar Lal Agarwalla 1967 B.L.J.R. 189 S.C. in which the provisions of Sections 2(f) and 4 of the Money Lenders Act came up for consideration. The suit there was for recovery of money on the basis of a promissory note for Rs. 10,000/- executed on February 4, 1954 by the defendant-appellant in favour of the plaintiff-respondent. The defendant-appellant claimed that no money was, in fact, advanced on February 4, 1954, and that the promissory note executed on that day was to pay by renewal a loan for Rs. 4,000/- which had been taken as far back as October 1946, but the joint family of the plaintiff was not registered then as a money lender and registration was later sometime in 1952. The sum of Rs. 10,000/-included the principal amount of Rs. 4,000/- and the remainder was towards interest. The defendant appellant, therefore, claimed that the suit was barred by Section 4 of the Money Lenders Act which provided that "No Court shall entertain a suit by a money lender for the recovery of a loan advanced by him after the commencement of this act unless such money lender was registered under the Bihar Money lenders Act, 1938 (Bihar Act III of 1938) at the time when such loan was advanced." This contention was repelled, and their lordships observed as follows:

We have to use the definition of ''loan'' given in Section 2(f) in its entirety for the purpose of Section 4 or we should not use it at all. But we cannot say that half the definition should be used for the purpose of Section 4 and not the other half. Further we see no reason to hold that the intention was that in Section 4 the word "loan" should have any meaning other than that given to it in Section 2(f). In this connection stress is laid on the words "advanced by him" which qualify the word "loan", and it is said that when a promissory note is made in renewal of a past liability arising out of an earlier advance, it cannot be said that any loan was advanced when the renewal was made. There are two answers to this argument. When a loan is renewed by the execution of a fresh document there is no difficulty in holding that the former loan was repaid by borrowing a fresh loan on the document of renewal: See B.S. Lyle Limited v. Chappeli 23 Pat. 618 : AIR 1914 Pat. 303 So the transaction of February 4, 1954 itself can be treated as a fresh loan for the purpose of Section 4 of the 1939 Act.

9 Few words are common to both Sections 6 and 7 of the Money Lenders Act. Section 6 includes the words "on loans advanced after the commencement of this Act." Section 7 also includes the words "in respect of a loan advanced before or after the commencement of this Act." Section 7 further includes the words "the amount of loan advanced." Section 4 of the same Act also includes the words "loan advanced by him after the commencement of this Act." So the interpretation put on the words "loan advanced" which are in Sections 4 and 7, in the decisions referred to above, are of some assistance in the present case. The real import of Section 6, the provisions of which are to be construed in the present case, is that an agreement by a debtor for payment of compound interest on loans advanced after the commencement of the said Act is void. In other words, the agreement to pay compound interest on loans advanced after the commencement of the Act cannot be enforced in a court of law. The

handnote (Ext. 1/d) does not contain any agreement for payment of compound interest, but learned Counsel for the appellants contended that the sum of Rs. 10,591/- included the amount of interest as well. The question for consideration is as to what is exactly meant by the words "loans advanced" occurring in Section 6. It is admitted in the present case that the sum of Rs. 10,591/- mentioned in Ext. 1 (d) was in respect of the past liability, that is to say, the debtors (defendants first party) had not paid the previous dues (the principal and the interest), and there was no fresh advance by the creditor (Plaintiff) on the 16th October, 1955, which was the date of the execution of the handnote (Ext. 1/d). I would refer to a decision of the Federal Court in AIR 1940 10 (Federal Court) . Sulaiman, J. observed in that case:

Thus ''loan'' is a wider word than the principal amount actually lent, as it may be an advance in cash or kind, or may be a transaction on a bond bearing interest executed in respect of past liability, or may be any transaction which is substantially a loan. Interest that accrues is not an advance of money, but can become a loan if liability to pay it is undertaken in a ''bond''." In the present case, defendant No. 1 undertook to pay the sum of Rs. 10,591/- which included the principal and the interest, and this undertaking was contained in the handnote dated the 16th October, 1955 (Ext. 1/d), and, thus, the entire sum of Rs. 10,591/- is to be deemed to be the amount of loan advanced on that date. The plaintiff himself stated in paragraph 12 of the plaint that the cause of action inter alia for the present suit arose on the 16th October, 1955, which was the date of promise and execution of the promissory note in question. In other words, the suit of the plaintiff is based on the handnote dated the 16th October, 1955, and the amount of loan mentioned in that hand-note has to be taken as the amount of loan advanced within the meaning of Section 6 of the said Act. This amount of loan, in the circumstances of the present case, was advanced by the handnote dated the 16th October, 1955, and this last hand-note has been relied upon by the plaintiff as the basis of his suit for recovery of the dues. The first handnote of the year 1944 or the handnotes, which were executed on different dates subsequent to 1944 and prior to the year 1955, are not the basis of the present suit. In case, the contention of learned Counsel for the appellants were to be accepted, then the position will be that the court in the present case will embark upon an enquiry as to what was the amount advanced by the plaintiff to defendant No. 1 originally in the year 1944 when the first handnote came to be executed. Moreover, according to the contention made by learned Counsel, the Court would then calculate as to what was the amount of interest which had accrued on the original sum advanced. In other words, the contention, if accepted, would mean the reopening of the account and the various transactions on the line provided in Section 8 of the said Act. Section 8, however, gave some relief to a debtor in case the loan was advanced before the commencement of the said Act, but in case of loan advanced after the commencement of the Act, no power was given by the statute in question to reopen the transaction, and all that was provided in Section 6 was that the agreement to pay compound interest shall be void. I am thus of the opinion that the expression "loans advanced" occurring in Section 6 must mean the entire amount of loan (principal and interest) mentioned in the document which is the basis of the suit. In this view of the matter, the learned Additional Subordinate Judge took the right view in holding that there was no stipulation for payment of compound interest and the claim of the plaintiff in respect of the entire amount, as stated in the plaint, was correct.

10. In the result, the appeal is dismissed with costs payable to the plaintiff-respondent No. 1 and the judgment and decree of the trial court are affirmed.

B.P. Sinha, J.

11. I agree.