
(2005) 03 MP CK 0022
In the Madhya Pradesh High Court
Case No : F.A. No. 87 of 1986

Sunderlal Saraf and Others	Vs	APPELLANT
Subhas Chand Jain and Others		RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Contract Act, 1872 — Section 176
Madhya Pradesh Money Lenders Act, 1934 — Section 3, 3(1), 6, 7
Money Lenders Accounts Rules — Rule 13, 6
Penal Code, 1860 (IPC) — Section 406

Citation : AIR 2006 MP 35 : (2005) 3 JLJ 353 : (2005) 3 MPLJ 73

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : P.N. Pathak, for the Appellant; J.P. Singhi and V. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

This first appeal has been preferred by plaintiffs assailing judgment and decree of trial Court dismissing their suit.

A suit for realization of Rs. 51,000/-has been filed by plaintiffs with a further prayer to pass a decree of interest @ 5% per annum from the date of the suit till the date of realization.

In brief the suit of plaintiffs is that they are real brothers and are carrying on the business in the sale and purchase of silver and its ornaments. Plaintiff No. 1 Sunderlal also used to do his own independent business as distinct from that of the firm. In order to meet his cash requirements and to streamline his individual business, he borrowed money from defendant Dharamchand on the security of silver. According to the plaintiffs, the defendant has been lending money in Shahdol in regular course of his business. Plaintiff No. 1 Sunderlal borrowed from

defendant on different dates various amounts of money, the details of which are mentioned in para 3 of the plaint. According to the plaintiffs, these transactions were separate and independent deals of plaintiff No. 1 Sunderlal and is distinct from those of his family firm. According to the plaintiffs since the defendant has been alleging that the transaction took place with plaintiff No. 2 Jagdeo Prasad, he is joined as co-plaintiff.

In para 4 of the plaint, the plaintiffs pleaded the terms of the contract of pledge under which the money was borrowed by the pawnor on the security of the silver pledged and they are as under :

- (a) The plaintiffs will have the right to redeem the pledged silver any time at their convenience on payment of the amount borrowed.
- (b) The defendant, on receipt of the amount lent by him, was obliged to return the specific silver pledged by the plaintiffs.
- (c) The defendant was entitled, in terms of the contract, to receive from the plaintiffs interest on the sums lent by him at rates and in quantity permitted by the law, but not more than 12% per annum, after complying with the provisions of law.

According to the plaintiffs oral requests were made by them to defendant to deliver the silver pledged on receipt of money borrowed by plaintiff Sunderlal. However, for one reason or the other, the defendant avoided. Thereafter, plaintiff No. 1 sent a notice dated 9-12-1972 to the defendant which was duly received by him. In this notice the plaintiffs specifically stated that silver pledged between 2-4-1968 and 21-9-1968 (both the days inclusive) weighed 107,540 kgs and was pure in the form of "sillis" and "langris". The defendant replied to this notice after an undue long time and after due consultation by his letter dated 5-1-1973 admitting the fact of pledge made on various dates and further affirming that a sum of Rs. 48,500/- in all was lent to the plaintiffs. According to the plaintiffs, the defendant not denied that the pledged silver was pure and that it weighed 107.540 kgs. Thus impliedly these facts were admitted by the defendants.

As per the case of plaintiffs, the silver which was pawned with the defendant was of pure quality and the "sillis" and "langaris" thereof were marked with stamp bearing the inscription in Hindi "Siddhnath Sadhe Ninninyabe Tanch Hati Marka Shahdol, M.P." It has been pleaded in the plaint that defendant had also given to the plaintiffs in his own handwriting "Rukka" bearing the dates on which various amounts were lent to the plaintiffs and also showing the weight of the silver pledged with him. In this Rukka the total weight of the silver pledged with the defendant if accounted, comes to 107.540 kgs. A notice dated 25-11-1974 was sent through Shri B. L. Udania Advocate by the defendant, and which was received by the plaintiffs. By this notice the defendant made a demand of the principal amount lent along with the interest thereon amounting to Rs. 37,500/- and offered to return the pledged silver which according to notice of the defendant was 100.540 kgs and of impure quality.

It has further been pleaded by the plaintiffs that after receiving the aforesaid notice sent by defendants, they through their counsel Shri B.C. Verma sent telegram on 30-11-1974 to the defendant reiterating their earlier stand that the silver pledged was 107.540 kgs of pure quality and further directed defendant not to sell the pledged silver. This telegram was followed by notice dated 2-12-1974 by plaintiffs' advocate Shri S. L. Saxena. As per plaintiffs, the telegram as well as the notice were duly received by the defendant but he did not pay any heed to them. The defendant thereafter, vide its letter dated 25-12-1974 informed plaintiffs that he had sold the pledged silver which according to him was only 100.273 kgs for a sum of Rs. 73,924.40. The defendant further informed that a sum of Rs. 500/- has been incurred in arranging the sale of the silver pledged. According to plaintiffs by selling the pledged silver without notice as required by Section 176 of the Indian Contract Act, 1872 (hereinafter referred to as "the Act") and in contravention of the specific directions of the plaintiffs conveyed to the defendants vide telegram dated 30-11-1974 and notice dated 2-12-1974, the sale of the pledged silver by the defendant amounts to conversion. The defendant in that situation is liable to return the silver and/or damages to the plaintiffs.

It has been pleaded in the plaint that the price of silver in and around the township of Shahdol in the month of November and December, 1974 is about Rs. 1000/- per kg and on this basis the price of the pawned silver at about that time, if accounted, comes to Rs. 1,07,540.00 out of this the defendant is entitled to deduct Rs. 48500/- the amount which he lent to the plaintiffs and thus plaintiffs are entitled to receive the balance amount of Rs. 59,040.00, however plaintiffs are claiming only Rs. 51,000.00.

Apart from the above said pleadings it has also been pleaded by the plaintiffs that the defendant as well as his father, to whose business defendant No. 1 succeeded, have been lending money in regular course of business within the meaning of M.P. Money Lenders Act, 1934 (in short the "Act of 1934") and thus the defendant is a money lender. Since the defendant is a money lender, he was required to comply with the provisions of Section 3 of the Act of 1934 which he never did. He did not maintain accounts for each debtors, as required by Section 3(1)(a) of the Act of 1934 nor furnished the plaintiffs a statement of accounts year by year as required by Section 3(1)(b) of the said Act. It has further been pleaded that in terms of Section 7 of Money Lenders Act, defendant cannot claim interest on various amounts lent by him to the plaintiffs.

On these premised pleadings a money decree to the tune of Rs. 51000/- along with 6% amount has been claimed by plaintiff by seeking a decree in that regard.

The defendant resisted the suit by filing written statement. According to him, the entire transaction of plaintiffs took place with his father Babulal. The defendant is not a money lender. He is carrying on the business of cloth. According to him, the business of money lending was also not of his father. However, the dates stated in para 3 of the plaint were admitted as well as different amount shown

against the same were borrowed by Jagdeo from Babulal. The defendant denied that 107.540 kgs of silver was pledged. Indeed, 100.273 kgs silver was pledged. This fact was also denied that the silver was pure. The defendant narrated the details of the transactions including the quality of silver and its purity, amount borrowed by plaintiff and the date which reads thus :

Date Amount borrowed Quantity of Silver Purity

2-4-68	8000.00	19.940	71.04%	29-8-68	8000.00	14.140	59.36%	7-9-68
8500.00	10.370	60.56%	9-9-68	5000.00	11.339	89.04%	15-9-68	12000.00
23.490	82.99%	21-9-68	10000.00	20.994	74.01%			

According to defendant the rate of interest was agreed Rs. 1% per month.

It has been denied in the written statement that an oral request was made by the plaintiff to redeem the pledged articles before the notice dated 9-12-1972. The contents of the notice dated 9-12-1972 are concocted. Though it is admitted that defendant sent a letter dated 5-1-1973 to plaintiff in reply to notice dated 9-12-1972. It has been emphatically denied in the written statement that silver was pure and it bears any stamp as stated by the plaintiffs either on the "Sillis" or "Langris". The defendant admitted issuance of "Rukka", The sending of telegram and notice is also admitted in para 10 of the written statement. However, according to defendant they were sent merely to create the evidence. According to defendant, plaintiffs were not having money to repay the amount which was lent to them, therefore, the pledged silver was sold. According to defendant the price of pure silver was near about 1000/- per kg, however, since the silver was impure and it could only be sold for Rs. 73,924.40. The defendant incurred an expense of Rs. 500/- for selling the same. According to the defendant, he is entitled to recover Rs. 48,500/- and interest due thereof. The plaintiffs are not entitled to get RS. 59,040/- or any other amount from the defendant on the contrary they are liable to pay Rs. 12,575.60 to the defendant. The details of which has been given in the written statement. The defendant claimed counter claim for the said amount and prayed that a decree of Rs. 12,575.60 with cost be passed in his favour.

The trial Court after framing the issues and recording the evidence dismissed the suit as well as the counter claim of the defendant. Hence this appeal.

After having heard learned Counsel for the parties, I am of the view that this appeal deserve to be dismissed.

On the basis of pleadings, it is revealed that certain facts are undisputed. This fact is not disputed that the silver was pledged to the defendant Dharamchand. As per plaintiffs, plaintiff No. 1 Sunderlal borrowed from defendant a total sum of Rs. 48,500/- on different dates which are mentioned in the plaint and on these dates certain quantity of silver was pledged. The case of plaintiffs is that they were insisting defendant to return the silver which was pledged and they were having the money to pay the debt and to redeem the pledged silver. Though

there is some dispute in regard to the weight of the silver which was pledged. According to plaintiffs the weight of pledged silver was 107.540 kgs, on the other hand, according to defendant the weight of the silver was 100.540 kgs. The Trial Court framed a specific issue No. 4 in this regard. This issue was decided in favour of plaintiff and it was held that 107.540 kgs of silver was pledged. The trial Court while deciding this issue considered the oral and documentary evidence placed on record.

It be seen that a private complaint was filed by plaintiff Sunderlal against defendant Dharamchand purporting to be u/s 406, IPC. In reply, which was submitted before the concerned Magistrate, the defendant Dharamchand in para 3 thereof, has specifically admitted that plaintiff No. 2 Jagdev Prasad pledged 107.500 gms silver to him and this reply (Ex. P-10) was submitted before the Magistrate on 19-6-1973 i.e. earlier to the notice sent on behalf of defendant Dharamchand by his counsel Shri B. L. Udanía dated 25-11-1974 (Ex. D-14). True in the notice (Ex. D-14) which was sent on behalf of defendant, it has been mentioned that 100.540 kgs of silver was pledged but right from very beginning the case of plaintiffs is that 107.540 kgs silver was pledged. The defendant earlier to sending of notice (Ex. D-14) admitted in reply (Ex. P-10) of private complaint that plaintiff pledged the silver 107.500 gms. The trial Court considered the oral and documentary evidence in this regard and ultimately came to hold that plaintiff No. 2 (wrongly typed as defendant No. 2) pledged 107.540 kgs silver. After going through the evidence of Dharamchand and plaintiff Sunderlal and also Ex. P-10, I am of the view that the trial Court did not commit any error in arriving at the finding that the weight of the silver which was pledged was 107.540 kgs. The defendant did not challenge the finding on this issue by filing any cross -objection. Even during the course of arguments learned Counsel for defendant did not challenge the said finding. Thus it is proved that 107.540 kgs of silver was pledged to the defendant.

According to plaintiffs, the silver which was pledged was 100% pure, however, according to defendant it was not 100% pure. In para 7(a) of the plaint, it has been pleaded by the plaintiffs that the pawned silver was of pure quality and the "Sillis" or "Langries" were stamped bearing the inscription in Hindi "Siddhnath Sadhe Ninyanwe Tanch Hati Marka Shahdol M.P." According to the plaintiff the term "Tanch" means pure, while according to the defendant Tanch cannot be said to be pure. In order to test the hallmark of the silver, defendant examined DW-2 Chhakodilal. This witness carries on the business of gold and silver at Jabalpur. This witness has specifically stated that Tanch silver is impure silver. The suggestion which was put on behalf of the plaintiff was denied by this witness that Tanch silver is pure and firmly this witness has stated that Tanch silver is impure silver. I am not impressed by the submission made by learned Counsel for plaintiffs-appellants in this regard that the silver pawned was pure silver. In this regard the testimony of Ramnarayan (D.W. 1) and Santosh Kumar (D.W. 5) may also be taken into consideration.

D.W. 1, Ramnarayan has stated that the pawned silver was Tanch silver and was impure. D.W. 5, Santosh Kumar is the person who carries on the business to ascertain the hallmark of gold and silver. This witness has proved the document (Exs. D-34 to D-39) and has stated that the samples of the silver which were sent, were tested by him. The trial Court after appreciating and marshalling the evidence of these witnesses, as well as the statement of plaintiff and defendant, came to hold that the pawned silver was not pure and it was impure. The finding in this regard arrived at by the trial Court is based on evidence and learned Counsel for appellants could not point out that how and in what manner these findings arrived at by the trial Court are erroneous.

In view of above, I hereby affirm the finding of trial Court given on issue Nos. 4 and 5 that the weight of pawned silver was 107.540 kgs and it was impure.

Learned Counsel for appellants has contended that silver was pawned to the defendant and plaintiff Sunderlal, by giving notice to defendant expressed his desire that he want to redeem the pawned silver. Learned Counsel also invited my attention that the notice dated 25-11-1974 (Ex. D-14) cannot be said to be the notice sent in terms of Section 176 of the Act. According to learned Counsel sending a reasonable notice of the sale is a condition precedent before selling the pawned articles. On the other hand learned Counsel for respondent has submitted before me that if the notice Ex. D-14 dated 25-11-1974 is considered in proper perspective, it cannot be said that no reasonable notice was issued prior to the sale of the pledged silver.

In order to appreciate and decide the rival contention of learned Counsel for the parties, it would be apposite to re-write the law in this regard viz. Section 176 of the Act which deals with the pawnee's right, thus :

Pawnee's right where pawnor makes default.-- If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

On bare perusal of Section 176 of the Act, it is revealed that sending a reasonable notice of the sale by pawnee is a condition precedent before selling the pledged article. Once the pawnee, after reasonable notice to the pawnor of his intention to sell the goods pawned, sells them u/s 176 of the Act, the pawnor's right of re-delivery is extinguished, but his right to redeem continue up to the sale. In this context, I may profitably rely the decision of Supreme Court in Lallan Prasad Vs. Rahmat Ali and Another, . After sale, it is the pawnee's

ordinary right to recover the balance of the loan unsatisfied on the sale pledged. If we analyse Section 176 of the Contract Act, it is perceptible that a pawnee has three rights in case of default by pawnor.

- (i) he may bring a suit upon the debt; and
- (ii) he may retain the pawned as collateral security; or
- (iii) he may sell it giving the pawnor a reasonable notice of sale.

The right to retain or sale the pawned are not concurrent but the right to sue and to sell are concurrent rights, i.e. he may sue and retain goods as concurrent security or sell them after giving notice. The word "or" used in the Section is in relation to, two or more alternatives does not necessarily imply mutual exclusion. It depends upon the intention ascertainable from the provision as a whole. On going through the provisions of Section 176 of the Act, one can safely say that the sale of pawned articles by a pawnee without notice to pawnor, is void. Examining from all the angles, it is clear like a noon day that pawnee may sell the thing pledged on giving the pawnor reasonable notice of the sale. The section is mandatory and the required notice must be given notwithstanding any contract to the contrary. Since the sending of notice is mandatory, it cannot be waived. It is the discretion of the pawnee either to file suit for recovery of the debt and retain pledged articles as collateral security or in the alternative to sell the pledged goods after giving reasonable notice to the pawnor.

The defendant (pawnee) sent notice showing his intention to sell the pawned articles. This notice is Ex. D-14 dated 25-11-1974 and has been addressed to Jagadev Prasad (Plaintiff No. 2), Chhotelal and Sunderlal (plaintiff No. 1), all sons of Late Daddi Lal Saraf. Para 6 of notice is very clear and it has been mentioned in it that the pledged silver be redeemed within 7 days from the date of receipt of the notice after making payment of Rs. 48500/- towards the original money which was borrowed and Rs. 37500/- towards interest, total Rs. 86,000/-, failing which the pledged article (silver) would be sold and if after selling the pledged articles, still some amount is left to be paid, legal proceedings would be initiated for its realization. In para 7 of the notice, it has been mentioned that looking to the quantity of the silver, it is not possible to sell it in Shahdol because requisite market in that regard is not available at Shahdol and, therefore, in case the pledged silver articles are not redeemed, defendant Dharamchand shall be having absolute right to sell the pledged silver articles at proper place. In plaint, receiving of notice (Ex. D-14) is admitted. Exs. D-15 and D-16 are the postal acknowledgment receipts, they are dated 27-11-1974. Thus, the notice Ex. D-14 dated 25-11-1974 was received on 27-11-1974 by plaintiffs.

Shri Pathak, learned Counsel for appellant by placing reliance on the decision of Division Bench of Patna High Court in the case of Bharat Bank Ltd. Vs. Sheoji Prasad, , has submitted that the defendant in his notice (Ex. D-14) has only stated that he would arrange the sale and that notice cannot be said to be a reasonable notice as contemplated u/s 176 of the Act. Considered the argument.

It be seen that para 6 of the notice (Ex. D-14) clearly states that if the pawned silver articles are not redeemed within 7 days, from the date of receipt of the notice, they will be sold. If the provision of Section 176 of the Act and para 6 of the notice are kept in juxtaposition and are read conjointly, it can safely be said that whatever has been said in para 6 of the notice, completely satisfies the requirement of Section 176 of the Act and it can be said that Ex. D-14 is the reasonable notice of the sale. Merely because in para 7 of the notice, it has been stated by defendant that it would not be possible to sell the pawned silver articles in Shahdol, since it is a small town having ordinary market and, therefore, the pawned silver articles would be sold at proper place, would not mean that vide notice Ex. D-14, only arrangement to sell the pawned articles were made. Para 7 of the notice simply shows that the pawned articles could not be sold at Shahdol on account of lack of suitable market. Therefore, the decision of Bharat Bank Ltd. (supra) has no application in the present case. The word "sale" in Section 176 of the Act means intended sale and not a sale actually arranged on a particular date. The reasonable notice, therefore, does not require specification of the date, time and place. According to me, it is not necessary that the notice u/s 176 of the Act, should state in date, time or place of the intended sale. What is required is, sending a reasonable notice of the sale. Since this section does not speak about sending the notice of intending sale on a particular date, time and place and, therefore, if the date, time and place are not mentioned in notice Ex. D-14, would not render the said notice ineffective or in contravention to Section 176 of the Act, According to me, since the pawnee (defendant) who had given a reasonable notice u/s 176 of the sale (Ex. D-14), was competent to sell the pawned articles at any time after sending the notice. Merely because 7 days notice was given by pawnee (defendant) would not ipso facto gets the notice invalid. Since no particular time has been prescribed in Section 176 of the Contract Act.

After receiving the notice (Ex. D-14), the plaintiffs through their advocate Shri B. C. Varma sent a telegram on 30-11-1974 to the defendant (pawnee) and thereafter it was also followed by notice dated 2-12-1974 which was sent by plaintiffs' advocate Shri S. L. Saxena. In the written statement, in para 8 sending of notice and telegram by plaintiffs, has been admitted by defendant (pawnee). However, vide letter dated 25-12-1974 (Ex. D-17) it was informed to the plaintiffs that the pledged articles are sold. According to me, if on receiving notice u/s 176, the plaintiffs (pawnor) by sending telegram and notice dated 2-12-1974 has asked to defer the sale of pledged articles and the pawnee (defendant) immediately not replied the notice, in itself is no evidence that the pawnee has withdrawn the notice to sell or he has given up or waived his right to sell. Learned Counsel for appellant could not point out any provision that after having received notice u/s 176 of the Act by the pawnor, if he had sent any notice to defer the date, the pawnee is bound not to sell the pledged articles. According to me, the pawnee has the right to choose his own time to exercise his power of sale of the pledged articles after he has given reasonable notice. In the

present case, there is no evidence on record that plaintiffs (pawnor) ever actually tendered the amount to defendant (pawnee) even after receiving the notice (Ex. D-14) which is a notice of intending sale.

Much has been stated by Shri Pathak, learned Counsel for appellant by inviting my attention to notice Ex. P-3 dated 9-12-1972 that for several times plaintiffs approached defendant to receive the money and redeem the pledged silver articles, but for one reason or the other it was avoided by the defendant (pawnee). If that is the position, according to me, who restrained the pawnor to bring the suit for redemption of the silver pledged articles. On the aforesaid basis, I am of the view that reasonable notice was given by the defendant (pawnee) and the sale of pawned articles was rightly proceeded.

The defendant gave notice Ex. D-17 on 25-12-1974 stating therein that the pledged articles were sold for Rs. 73,834.40. The principal amount and the interest accrued on it comes to Rs. 86000/- and after deducting Rs. 73,934.40 still plaintiffs are required to pay Rs. 12,575.60 and for that purpose a counter-claim was filed by defendant. The trial Court did not find any merit in the counter-claim and the same was dismissed. The defendant neither filed any cross appeal nor filed any cross-objection in this appeal and, therefore, the dismissal of the counter-claim of defendant had attained the finality.

The plaintiffs have filed his suit for realization of Rs. 51,000/- and as per plaint averments the price of silver was Rs. 1,07,540.00 since the silver was pure. Out of this amount the defendant is entitled to deduct the principal amount of Rs. 48500/- which he lent to the plaintiffs and the plaintiffs are entitled to receive the balance amount Rs. 59,040.00 but plaintiffs have prayed only for Rs. 51,000.00. I have already held hereinabove and affirmed the finding of the Trial Court that the pawned silver articles were not pure silver. Therefore, the contention of plaintiff in this regard had already been rejected and thus, it cannot be said that the cost of the silver was Rs. 107,540 as stated in the plaint, is correct.

According to plaintiffs the defendant is not entitled to claim any interest as he has not maintained the accounts in terms of Section 3 of M.P. Money Lenders Act, 1934. The trial Court framed issue No. 3 in this regard and has held that defendant is a money lender. The contention of defendant denying this fact was repelled. On going through the evidence of P.W. 1, Chintamani, P.W. 2, Sunderlal and P.W. 4, Chokhelal, it is clear that the defendant is a money lender and he carries on this business apart from his business of cloth. Ex. P.9 is the certified copy of the registration of defendant as registering him as money lender under Act of 1934 and, therefore, it is proved that defendant is a money lender. The defendant submitted Exs. D-22 to D-26 which are certificates of posting. In paras 8 and 9 his testimony, defendant Dharamchand (D.W. 4) had stated that he was regularly sending the annual accounts to the plaintiffs. u/s 3(1) of the Act of 1934 every money lender is required to maintain regular accounts for each debtor separately of all transactions and he is further required to furnish the debtor every year with a legible statement of accounts signed by the money

lender. The rules, namely, Money Lenders Accounts Rules are framed under the Act of 1934 and according to Rule 13(a) of these rules, the statement of accounts should be sent to the debtor by sending it by post to the address entered at the head of the account in accordance with Rule 6 and the creditor is required at the time of posting to obtain certificate of posting. Thus, it is proved by Exs. D-21 to D-26, which are the certificate of posting, that the statements of account were sent to the plaintiffs. In this manner, sending of statements of account is proved but it is not proved that the same was regularly kept in terms of Section 3(a) of the Act of 1934. The defendant has also admitted that he had not maintained any register in that regard and on the basis of memory he sent the statement of accounts, (Exs. D-27 to D-33). The contention of Shri Pathak, learned Counsel for appellant is that since defendant who is a money lender had failed to maintain the account regularly in terms of Section 3(1)(a) of the Act of 1934, therefore, he is not entitled to the interest on the money lent to the plaintiffs. In this regard, he has invited my attention to Section 7 of the Act of 1934. Learned Counsel has placed reliance on two decisions in this regard they are Rajaram Bhiwaniwala and Others Vs. Nandkishore and Others, (Full Bench) and Pratap Singh Vs. Firm Devchand Kishanlal and Others, . According to learned Counsel the trial Court did not accept the contention of plaintiff on the ground that the money lender in the present case is defendant and he has not filed any suit and, therefore, Section 7 has no applicability on the present factual scenario. The contention of learned Counsel for appellant is that Section 7 is applicable to money lenders, he may be plaintiff or may be defendant and if he had not maintained the account in terms of Section 3(1)(a) of the Act of 1934, he is not entitled for the interest. It be seen that both the decisions which are relied by the appellant are tangentially off the point. In both the cases, the suit was brought by the money lender and money lender was the plaintiff. However, the present suit has not been filed by the Money Lender and, therefore, the cases of Rajaram Bhiwaniwala (supra) and Pratap Singh (supra) are not applicable. In order to appreciate the contention of learned Counsel for appellant, it would be appropriate to re-write Section 7(a) & (b) of the Act of 1934 which reads thus :

7. Procedure of Court in suits regarding loans. Notwithstanding anything contained in any other enactment for the time being in force, in any suit or proceeding relating to a loan --

(a) the Court shall, before deciding the claim on the merits, frame and decide the issue whether the money-lender has complied with the provisions of Clauses (a) and (b) of Sub-section (1) of Section 3;

(b) If the Court finds that the provisions of Clause (a) of Sub-section (1) of Section 3 or of Section 6 have not been complied with by the money-lender, it shall, if the plaintiffs claim is established in whole or in part, 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 disallow costs; and

On bare reading of Section 7(b) of the Act of 1934, it is gathered that if the

money lender files a suit and if plaintiffs claim is established then if there is non-compliance of Sub-section (1) of Section 3 he shall not be entitled for the interest. Thus, the contention of learned Counsel for appellant cannot be accepted that Section 7 of the Act of 1934 is applicable to defendant also. Shri Sanghi, learned senior counsel for respondent has placed reliance on the decision of this Court in the case of Sitaram Shrawan Koshti v. Bajya Parnya Bhoi AIR 1941 Nag 177. In this case it has been held as under :

It was argued that the burden is on the plaintiff to prove that he is not a moneylender. That however is incorrect. The Act only applies to money-lenders and therefore, before it can be applied it must be shown by the person seeking to apply it and seeking to take advantage of its provisions that the plaintiff is a money-lender.

Thus, if the money-lender is plaintiff then only compliance of Section 3 is to be considered. In this view of the matter, I am not impressed by the submission of learned Counsel for appellant that defendant was not entitled for the interest.

For the reasons stated hereinabove, I do not find any merit in this appeal and the same is hereby dismissed without any order, as to costs.