(2000) 08 KAR CK 0058

In the Karnataka High Court

Case No : Civil Revision Petition No. 616 of 2000

V.P.R. Finance Corporation	APPELLANT
Vs	
R. Lakshminarayana	RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:
Karnataka Money Lenders Act, 1961 — Section 10

Citation : (2001) 3 KarLJ 585 : (2002) 3 RCR(Civil) 165

Hon'ble Judges : B. K. Sangalad, J

Judgement

B.K. Sangalad, J.-This CRP is directed against the judgment and decree dated 30-11-1999 passed by the XI Additional Judge, Small Causes Court, Bangalore, in S.C. No. 4215 of 1996.

2. The petitioner is the plaintiff in the Court below and instituted S.C. No. 4215 of 1996 against the respondent-defendant for recovery of Rs. 24,300/-. The defendant had borrowed Rs. 20,000/- from the plaintiff on a On Demand Promissory Note for Rs. 20,000/- dated 29-5-1991. The respondent has contested the claim on the ground of limitation, counter claim, etc. The lower Court dismissed the suit on the ground that there was no valid money lenders licence on the date of the transaction. Being aggrieved by this, the present revision petition arises.

3. Mr. Shivananda Raju, learned Counsel for the petitioner brought to my notice, the observation of the lower Court on page 14 of the judgment wherein, the lower Court has held that the plaintiff has proved that the defendant has borrowed the loan and liable to pay the suit amount as claimed. But, the suit itself is not maintainable according to him for want of licence as on the date of the loan i.e., on 29-5-1991.

4. Mr. Mahabaleshwara, learned Counsel for the respondent submitted that even the petitioner has not produced any application to show that he had applied for the fresh licence for the period of 1991. As such, it is deemed that there was no valid licence. As such, there is no justification to interfere with the judgment and

decree passed by the Small Causes Court, Bangalore.

5. In view of these rival contentions, the only question that arises is whether there was any valid licence on the date of transaction i.e., on 29-5-1991?

6. Mr. Shivananda Raju relied upon Section 10 of the Karnataka Money-Lenders Act, 1961. Of course, there is an amendment to the Act in the year 1988. When this transaction took place, the old Act was applicable. According to Section 10, the licence shall be valid from the date on which it is granted till 31st day of December. This goes to show every licence issued from 1st of January to 31st of December of the year shall be valid. The proviso of Section 10 reads as follows:

"Provided that where money-lender holding the licence has made an application for a fresh licence before the date prescribed under sub-section (1) of Section 6, for the succeeding year, such money-lender shall, notwithstanding the expiry of the term of his licence be deemed to have a valid licence until orders are received by him on his application for the fresh licence".

Of course, there is a decision in case of Basappa v Garemane Kamanna, 1985(1) Kar. L.J. 207, wherein, it is held that the licence under the Act can be prospective in nature. But in this case, this decision will not come to the rescue for the respondent for the simple reason is that the petitioner had already applied for fresh licence. Of course, the licence was received by him subsequent to the transaction. But the proviso clearly explains that the petitioner was deemed to have a valid licence until orders were received by him on his application for the fresh licence. In the case on hand, a fresh licence was issued which was valid upto 31st December, 1991. This is also marked before the lower Court at Ex. P. 10. Once this licence has been issued, it is deemed that the petitioner had made an application well-within time. Even assuming that the application was not made well-within time, it is only between the authorities and the licensee. If there was any defective application, the licence could not have been granted. The very fact that the licence has been granted presupposes that the application was received well-within the time as contemplated by the law. Hence, in my opinion the proviso of Section 10 makes it clear that till the receipt of the licence, the person who has applied for the licence is deemed to have a valid licence. He cannot take shelter under this proviso only if his licence was not granted subsequent to his application. Hence, the lower Court has erred in coming to the conclusion that there was no valid licence. In my opinion, there is a good ground to interfere with. In the light of this observation, the following order is passed:

The order dismissing the suit is set aside and the lower Court is directed to pass the decree in accordance with law. Accordingly, the petition is allowed.

