

Ranchoredass Vs. Malookchand

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Court : Rajasthan

Decided On : Sep-03-1980

Reported in : 1980WLN580

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Civil Revision No. 61 of 1977

Appellant : Ranchoredass

Respondent : Malookchand

Disposition : Petition allowed

Judgement :

S.N. Deedwania, J.

1. This revision is preferred by defendant-petitioner Ranchoredass against the judgment and decree, dated February 5, 1977 of learned Civil Judge, Barmer.

2. The necessary facts may thus briefly be stated. That the non-petitioner-plaintiff filed a suit for recovery of Rs. 1400/- in the court of Munsif, Balotra with the allegations that the defendant-petitioner took a loan of Rs. 1000/- from him on 11-9-71 and executed a pronote for the same. The suit was filed on 24-9-74 and the defendant-petitioner took an objection that no decree could be passed against him in view of breach of Sections 22 and 23 of the Rajasthan Money Lenders Act,

1963 (hereinafter referred to as the 'Act'). In view of the amended Section 26 of the Act, the trial court held that the suit has to be dismissed, because the non-petitioner-plaintiff failed to comply with the provision of Sections 22 and 23 of the Act and consequently, dismissed the suit on 29-6-76. The case was taken up in appeal and the learned first appellate court was of the view that the amended Section 26 of the Act did not apply to the suits, which have been filed before it was amended.

3. I have heard the learned Counsel for the parties and perused the record of the case carefully.

4. It appears that Section 26 of the Act was amended by the Rajasthan Money Lenders (Amendment) Act, 1976 on 13-2-76 and before, this section stood amended in identical terms by the Rajasthan Money Lenders (Amendment) Ordinance, 1975. Amongst others, Sections 11 and 26 were amended. At this stage, I shall read the amended and un-amended those sections of the Act before amendment. Section 11 of the Act was to the following effect:

Section 11.-Stay of suits by money-lenders not holding licence:

(1) After the expiry of six months from the date on which this Act comes into force no court shall pass a decree in favour of a money-lender in any suit filed by a money-lender to which this Act applies unless the court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced the money-lender held a valid licence.

(2) If during the trial of any such suit a court finds that the money-lender had not held such licence, the court may, on the application of the money-lender, stay the hearing of the suit and require him to produce within a period of three months a licence on payment to the Registrar of all arrears of the licence fees payable by him under this Act for the period commencing from the date on which he started the business of money-lending or the expiry of six months from the date on which this Act comes into force, whichever is later, together with such penalty, not exceeding five hundred rupees, as the court may direct and if such court is that of a Nyaya Panchayat, such penalty shall not exceed fifty rupees.

Provided that when the court is satisfied that the failure of the money-lender to obtain a licence was due to any reasonable cause, the court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money-lender.

(3) The court may, on sufficient cause being shown from time to time, extend the period during which the money-lender shall be required to produce a licence.

(4) If the money-lender fails to produce the licence required under Sub-section (2) within the period specified therein or within such period as may be extended under Sub-section (3), the court shall dismiss the suit. If the money-lender produces such licence within the aforesaid period, the court shall proceed to hear the suit.

(5) Nothing in this section shall affect-

(a) suit in respect of loans advanced by a money-lender before the date on which this Act comes into force;

(b) the powers of the Court of Wards or an Official Assignee or a receiver or an administrator or a court under the law relating to insolvency for the time being in force or a liquidator under the Companies Act, 1956 (Central Act 1 of 1956) to realise the property of a money-lender.

Amended Section 11: 'Section 11. Dismissal of suit by money-lender not holding licence:

(1) where a suit to which this Act applies is filed by a money-lender and the court in which it is filed is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender did not hold a valid licence, it shall dismiss the suit forthwith without going into the merits of the claim and shall order the refund of the security, if any, without repayment of the loan.

(2) Nothing in this section shall affect-

(a) suits pending in any court on the date of the commencement of the Rajasthan Money-lenders (Amendment) Ordinance, 1975, which may be disposed of according to the law existing immediately before such commencement;

(b) suits in respect of loans advanced by a money-lender before the date on which this Act came into force; and

(c) the powers of the court of Wards or an Official Assignee or a receiver or an administrator or a court under the law relating to insolvency for the time being in force or a liquidator under the Companies Act, 1956 (Central Act 1 of 1956), to realise the property of moneylender.

The un-amended Section 26(b) and amended Section 26(b) of the Act are as follows:

Section 26(b). If the court finds that the provisions of Section 22 and Section 23 have not been complied with by the money-lender it may, 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 dis-allow costs.

Amended Section 26(b):

Section 26(b). If the court finds that the provisions of Section 22 and Section 23 have not been complied with by the money-lender in respect of the whole or any part of the claim, it shall dismiss:

(i) the whole suit with costs where such contravention has been in respect of entire claim in the suit; or

(ii) so much of the claim with costs proportionate thereto in respect of which the said provisions have not been complied with by the moneylender.

5. It is argued by the learned Counsel for the petitioner-defendant that in view of clear language of amended Section 26 of the Act, it is mandatory for court to dismiss the whole suits with costs. Its unequivocal language that it shall dismiss (1) the whole suit... clearly reflects the intention of the legislature that it should apply to pending suits. The intention of the legislature is further obvious from a perusal of amended Section 11 of the Act, wherein it has been specifically stated that nothing in the section shall affect the suits pending in any court on the date of

the commencement of the Rajasthan Money Lenders (Amendment Ordinance), 1975. If the legislature really intended that the amended Section 26 of the Act was not to apply to the pending suits, it could make its intention clear by incorporating a provision similar to the one contained in Section 11 of the Act.

6. On the other hand, the learned Counsel for the non-petitioner-plaintiff submits that the statement of objects and reasons for amending Section 26 of the Act would make it clear that it was for future contingencies. My attention was drawn to the following statement of objects and reasons-

Statement of Objects and Reasons

Although the Rajasthan Money-lenders Act, 1963 (Act No. 1 of 1964) already contained adequate provisions for the regulation and control of transaction of money lending carried on by professional money-lenders and for delivery of statements of amount of loan advanced and debtor's account together with copies thereof by the money-lenders to each of their debtors and to the Assistant Registrar, yet there still existed some loop holes which needed to be plugged. Some of the loop holes were that even if an unlicensed money-lender had filed a suit against a debtor for the recovery of debt owed to him, the court could grant time of three months to the money-lender to obtain a licence and this period could further be extended, from time to time, by the court. Moreover, if the money-lender failed to furnish the aforesaid statements and copies thereof, the court could only dis-allow the whole or any portion of the interest found due, as might seem reasonable to it and could dis-allow cost. These provisions were considered insufficient to effectively control the unscrupulous professional money-lenders. To make them more stringent, the Governor promulgated the Rajasthan Money-Lenders (Amendment) Ordinance, 1975 (Rajasthan Ordinance No. 14 of 1975). By this Ordinance it was provided for future that where the court was satisfied that at the time when the loan or any part thereof was advanced, the money-lender did not hold a valid licence, it shall dismiss the suit forthwith. It was further provided that if the court found that the provisions relating to delivery of statements and copies thereof by a money-lender to the debtor or to the Assistant Registrar were not complied with the Court will dismiss the entire claim or so much of the claim of

the money-lender in respect of which there was contravention.

7. I have considered the arguments carefully and also perused the various authorities cited by the learned Counsel for the parties. It may be stated that it is not disputed that the money-lender plaintiff-non-petitioner did not comply with the provision of Sections 22 and 23 to the Act. Reference need not be made to the various authorities because the entire law has been succinctly summarized by this Court in *Smt. Kishan Pyari v. Smt. Shanti* (1977 R.L.W. 77):

It is well settled that though the legislature is undoubtedly competent to take away vested rights by means of retrospective legislation, yet unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. Retrospective operation of a statutory provision can be inferred even in cases where such retrospective operation appears to be clearly implicit in provision construed in the context where it occurs.

I have refrained from making reference to the other authorities because the law now appears to be well settled. The intention of the legislature is evident in the language employed by it, while amending Section 26 of the Act. It is specifically said in unequivocal and mandatory terms that the court shall dismiss the whole suit with costs if it finds that the provision of Sections 22 and 23 have not been complied with by the money-lender in respect of the whole claim. It therefore means that a duty has been cast upon the courts to dismiss the whole suit with costs where the provision of Sections 22 and 23 of the Act had not been complied by the money-lender in respect of the whole claim. If the legislature really intended that the provision of amended Section 26 of the Act should not apply to a pending suit, a safe-guard like the one incorporated in Section 11 of the Act could have been enacted in Section 26 of the Act. Section 11(2)(a) specifically states that nothing in the Section shall affect the suits pending in any court on the date of commencement of the Rajasthan Money-Lender (Amendment) Ordinance, 1975. It may be recalled that both the Sections 11 and 26 were first amended by the Rajasthan Money-Lenders (Amendment) Ordinance, 1975 and subsequent

amendments in identical terms were made by the Rajasthan Money Lenders (Amending) Act, 1976. Thus, from a comparison of amended Sections 11 and 26 of the Act, the intention of the legislature is evident that the amended Section 26 of the Act is to apply to pending suits. The legislature is competent to take away any vested right by retrospective legislation by expressing its intention in unambiguous terms. The argument of the learned Counsel for the non-petitioner-plaintiff to the contrary to the little avail that amended Section 26 of the Act is to apply to future suits in view of the statement of objects and reasons for the amendment. The intention of the legislature contained in the statement of objects and reasons was with respect to Section 11 of the Act and therefore a suitable safe-guard was provided in the amended Section 11 of the Act. No such similar provision was engrafted in amended Section 26 of the Act. Moreover, it is not specifically stated in the statement of objects and reasons that the Section 26 of the Act is being amended to provide for future. In any case, the unambiguous language of the amended Section 26 of the Act negatives the contention that it was to apply to the suits filed after the amendment. I am, therefore, of the view that 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 provision of Sections 22 and 23 of the Act have not been complied with by the Money-lender, in respect of the whole claim. This intention is further evident from the fact that it was specifically provided in the amended Section 11 of the Act, that it shall not apply to the pending suits, while the legislature intentionally and deliberately omitted to engraft such a provision in Section 26 of the Act. I am, therefore, of the view that amended Section 26 of the Act applies to the pending suits. The learned appellate court was in error in coming to a conclusion that this Section as such did not apply to the pending suits.

8. I, therefore, accept the revision petition, set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court. In the facts and circumstances of the case, no order as to costs of this revision petition and the first appeal is made.