

Orissa Money Lenders Act, 1939

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Orissa Money Lenders Act, 1939

An Act to regulate money-lending transactions and to grant relief to debtors in the State of Orissa Whereas it is expedient to regulate money-lending transactions and to grant relief to debtors in the State of Orissa; It is hereby enacted as follows : Published vide Orissa Act No. III of 1939. For Statement of Objects and Reasons, see Orissa Gazette Ext. No. 1939; for Report of the Select Committee, see Orissa Gazette Ext. No. 1939-Pt. XI; and for Proceedings in Council see Proceedings of the Orissa Legislative Assembly, 1938-39, Vol. III.

CHAPTER 1

PRELIMINARY

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Orissa Money lenders Act, 1939.

(2) It extends *** to the whole of the State of Orissa.

(3) All or any of the provisions of this Act shall come into force

throughout the whole or any part of the State on such date or dates as the Governor may, by notification/appoint**** and different dates may be so appointed for different provisions and different areas.

***. Sees. 1, 2, 3, 9 to 17, 20, 21, 22, 23, 24, 25, 26 and 27 apply to all the partially excluded areas in the Province of Orissa with effect from the 15th April, 1940 subject to certain modifications No.1120-(IV-A-1-40-D., dated the 6th April, 1940).

****. Secs. 1, 2, 3, 9, 10, 11, 13 (except in so far as it applies to Sees. 10, 11, 12 and . 13 to pending such appeals and execution proceedings mentioned therein) 17, 20, 21, 22, 25 and 27 shall come into force throughout the State of Orissa on the 1st July, 1939, Part III.

Sections 14, 15, 16 (except in so far as it applies to Secs. 10, 11, 12, and 13 to pending suits, appeals and execution proceedings mentioned therein) 23, 24 and 26 came into force from 1st December, 1939 throughout the State of Orissa- see Orissa Gazette Ext. No. 1939-Part III.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context-

(a) "Bank" means-

(i) a banking company as defined in the Banking Companies Regulation Act, 1949 (10 of 1949);

(ii) the State Bank of India, constituted under the State Bank of India Act, 1955 (23 of 1955);

(iii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks,) Act, 1959 (38 of 1959);

(iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(v) the Industrial Development Bank of India constituted under the Industrial Development Bank of India Act, 1964 (18 of 1964);

(vi) the Agricultural Refinance Corporation constituted under the agricultural Refinance Corporation Act, 1963 (10 of 1963);

(vii) the Life Insurance Corporation of India, constituted under the Life Insurance Corporation Act, 1956 (31 of 1956);

(viii) the Industrial Finance Corporation of India, constituted under the Industrial Finance Corporation Act, 1948 (15 of 1948);

(ix) the Orissa State Financial Corporation, constituted under the

State Financial Corporation Act, 1951 (68 of 1951);

(x) any other banking or financial institution notified in this behalf by the State Government;

(b) "business of money-lending" means the business of advancing loans;

(c) "capital" means that which a money-lender invests in the business of money-lending whether in money or in kind;

(d) "company" means a company registered under the Companies Act, 1956 (5 of 1956);

(e) "Co-operative Society" means a society registered or deemed to have been registered under the Orissa Co-operative Societies Act, 1962 (Orissa Act 2 of 1963) and includes a Land Development Bank as defined in that Act;

(f) "Court" includes a Court acting in the exercise of insolvency jurisdiction and also a Court or other authority to which a decree is sent for execution;

(f-1) "debtor" means a person to whom a loan is advanced and includes his successor-in-interest or surety;

1(g) "decree" means a decree as defined by the Code of Civil Procedure, 1908 and includes decree passed by an Agency Court under the Agency Rules, an award enforceable as a decree or a Court under the Indian Arbitration Act, 1899 and also preliminary decrees and final decrees in the case of secured loans;

2[(g) "decree" means a decree as defined by the Code of Civil Procedure, 1908 (V of 1908) and includes an award enforceable as a decree of a Court under the Indian Arbitration Act, 1899 (IIX of 1899) and also preliminary decrees in the case of secured loans;

(h) "interest" means a rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise;

(i) "loan" means an advance whether of money or in kind or interest made by a money-lender and shall include a transaction on a document bearing interest executed in respect of a past liability and any transaction which in substance, is a loan, but shall not include-

(1) a loan advanced by the State Government or by any local body authorized by the State Government or by a Co-operative Society;

(2) a deposit of money in a Post Office Savings Bank or a deposit of money or other property in any other Bank, in a company or with a Co-operative Society;

(3) the amount or the proportionate, amount as the case may be,

payable under a mortgage by the purchaser at a sale in execution of a decree of a Court or otherwise of the whole or part of the properties subject to a mortgage, the purchase having been made prior to the coming into force of this Act;

(4) any loan or loans due to a widow on the 1st February, 1930, who on that date did not own any other property; provided that the principal amount of the loan or loans does not exceed rupees two thousand.

Explanations- (1) A bond bearing interest executed in respect of goods taken on credit constitutes a loan;

(2) A supply of goods-

(i) on khata carrying interest up to six and a quarter per centum simple per annum; or

(ii) on credit;

is not a loan;

(3) For the purposes of this clause "purchaser" includes his legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise;

(4) For the purposes of this clause, the house in which the creditor-widow lived or any furniture therein or her household utensils, wearing apparel, jewellery or such like personal belongings shall not be regarded as property;

(j) "money-lender" means a person whose business is that of advancing loans but does not include a Bank or Co-operative Society and the expression "money-lending" shall be constituted accordingly;

(k) "prescribed" means prescribed by rules made under this Act;

(I) "principal" means, in relation to a loan the amount actually lent to the debtor;

(m) "registered money-lender" means a person to whom registration certificate has been granted under Section 5, and shall include a Hindu undivided family and the legal representatives and successors- in-interest, whether by inheritance, assignment or otherwise, of a registered money-lender;

(n) "rules" means rules made under this Act;

(o) "secured loan" means a loan for which the money-lender holds a mortgage, charge, lien, or pledge on the property of the debtor or any part thereof as a security for that loan;

(p) "Sub-Registrar" means a Sub-Registrar appointed under the Indian Registration Act, 1908 (XVI of 1908);

(q) "suit" includes an appeal;

(q-1)"Tahasildar" includes an Additional Tahasildar;

(r) "unsecured loan" means any loan other than a secured loan.

1. Clause (g) as it exists at first place is in force in the partially excluded areas of the Province, see the Orissa Laws Validating Regulation, 1942 (Orissa Regulation 1 of 1943), Section 2 and Second Schedule.

2. Clause (g) as it exists at the second place is in force in the areas other than the partially excluded areas of the Province see *ibid*.

3. Power Of State Government To Exempt Any Money-Lender Or Class Of Money :-

Lenders or any class of loans from all or any of the provisions of this Act-The State Government may, by notification for any special reason or reasons to be stated in such notification, exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the State of Orissa from the operation of all or any of the provisions of this Act.

CHAPTER 2

REGISTRATION OF MONEY-LENDERS AND ACCOUNTS TO BE KEPT BY MONEY-LENDERS

4. No Person To Carry On Money :-

Lending business without being registered-No person shall carry on the business of money lending after the 22nd day of November, 1975 unless he is registered as a money-lender under this Act.

4A. Register Of Money-Lenders :-

(1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.

5. Registration Of Money-Lenders And Registration Fee :-

(1) Any person may make an application to be registered as a money-lender. Every such application shall be in writing and shall state-

(a) the name and address of the applicant;

(b) the name and style under which he carried on or desires to carry on business as a money-lender;

(c) the principal place of his business and the branches thereof, if any;

(d) whether any certificate of registration previously granted to him

under this Act has been cancelled; and

(e) such other particulars as may be prescribed.

(2) (a) Every application made under Sub-section (1) shall be accompanied by the prescribed registration fee and shall be presented to the Sub-Registrar within whose jurisdiction the principal place of business referred to in Clause (c) of Sub-section (1) is situate.

(b) Any such application, which is not accompanied by the prescribed registration fee or does not contain the particulars specified in Sub-section (1), shall be summarily rejected.

(3) The State Government may by rules prescribe for different classes of money-lenders and for different areas a registration fee to be paid by an applicant for registration :

Provided that the State Government may, by notification exempt any person or class of persons from the payment of the registration fee either generally or in any specified area.

(4) On receipt of an application under Clause (a) of Sub-section (2) the Sub-Registrar shall, except where a certificate previously granted to the applicant has been cancelled under this Act and the order of cancellation is in force or, as the case may be, the period for which the applicant has been disqualified to be registered as a money-lender has not expired, grant a registration certificate in the prescribed form to the applicant.

5A. Restriction On Non-Citizens :-

1[(1) Notwithstanding anything contained in Section 5, no person who is not a citizen of India shall, on and from the date of commencement of the Orissa Money Lenders (Amendment) Act (Orissa Act 18 of 1986)(hereinafter referred to as the said date), carry on the business of money-lending.

(2) Any license granted or renewed under this Act prior to the said date in respect of a person who is not a citizen of India, shall stand cancelled and all transactions of money-lending carried on by such person as a money lender shall cease from that date.

(3) Any person referred to in Sub-section (1) who has obtained a license for money-lending under this Act, prior to the said date may, subject to the provisions of this Act, recover through a competent Court the loans advanced before the said date.

(4) Any person referred to in Sub-section (1), who carries on the business of money-lending in contravention of the provisions of this Act or recovers his loan otherwise than in accordance with the provisions of Sub-section (3) shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

(5) Any Court trying an offence under this section shall, unless it is proved to the contrary, presume that the accused is not a citizen of India, and that he was carrying on business of money-lending in contravention of the provisions of this section.]

1. Substituted vide Orissa Act No. 11 of 1980.

6. Duration And Renewal Of Registration Certificate :-

1[(1) A registration certificate granted under Section 5 shall, unless sooner cancelled, remain in force for one year from the date on which it is granted and may be renewed from time to time for a period of one year at a time :

Provided that a registration certificate granted or renewed prior to the date of commencement of the Orissa Money-lenders (Amendment) Act, 1980 shall unless sooner cancelled, remain in force for a period of five years from the date on which it was granted or renewed, as the case may be.]

(2) The provisions contained in Section 5 shall apply in relation to the renewal of a registration certificate, as they apply in relation to the grant of a registration certificate.

1. Substituted vide Orissa Act No. 11 of 1980.

7. Registered Money :-

Lender to maintain accounts and give receipts- Every registered money-lender shall in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act-

(a) regularly record and maintain or cause to be recorded and maintained an account showing for each debtor-

(i) the date of the loan, the amount of the principal of the loan and the rate per centum per annum of interest charged on the loan;

(ii) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment; and

(iii) any other terms which may be agreed on between the money lender and the debtor;

(b) give to the debtor, or his agent, a receipt for every sum paid by or on behalf of the debtor duly signed and, if necessary, stamped at the time of such payment; or within a reasonable time, after it. The money-lender shall also, on demand, permit the debtor or his agent to endorse such payment on the document, if any, evidencing the loan; and

(c) give to the debtor a signed receipt for every pawned article with its general description, immediately after it is pawned, mentioning the amount for which it is pawned, the rate of interest charged per centum per annum and other particulars as may be prescribed.

7A. Maximum Rate Of Interest :-

No money-lender shall, charge interest on any loan advanced by him at a rate exceeding-

- (a) nine per cent per annum simple interest, where the loan is secured; and
- (b) twelve per cent per annum simple interest, where the loan is not secured.

7B. Inspection :-

(1) Any Sub-divisional Officer and any Tahasildar may, at any time, with such assistance as he thinks necessary, enter any premises within his jurisdiction in which any person carries on business as a money lender and inspect the books, accounts, records, files, documents, safes, vaults and pledges in such premises.

(2) The Sub-divisional Officer or the Tahasildar shall have the authority to require any person whose testimony he may require regarding any loan or any money-lending business, to appear before him or to produce or cause to be produced any document and to examine such person on oath.

(3) While making an inspection under Sub-section (1), the inspecting officer may seize and take to his office for further investigation such books, accounts, records, files and documents as he considers necessary after giving to the person from whose custody they are seized, a receipt describing the books, accounts, records, files and documents so seized.

(4) The Inspecting Officer shall, within seven days of the seizure and removal of the books, accounts, records, files and documents from the premises, return them to the person from whose custody they were removed, unless they are required to be made over to the police or to be produced in a Court.

7C. Maximum Amount Recoverable On Loans :-

No money-lender shall recover towards the interest in respect of any loan advanced by him, an amount in excess of the amount of the principal.

7D. Discharge Of Loan On Payment Of Double The Amount Of The Principal :-

Any loan in respect of which the money-lender has realised from the debtor an amount equal to, or more than twice the amount of the principal, shall stand discharged and the amount, if any, so realized in excess of twice the amount of loan shall be refunded by the money-lender to the debtor.

CHAPTER 3

PROVISIONS RELATING TO SUITS IN RESPECT OF LOANS AND EXECUTION OF DECREES

8. Suit For Recovery Of Loan Maintainable By Registered Money-Lenders Only :-

A money-lender shall not be entitled to institute a suit for the recovery of a loan advanced by him after the date on which this section comes into force unless he was registered under this Act at

the time when such an amount was advanced :

Provided that a money-lender shall be entitled to institute a suit to recover a loan advanced by him at any time in the course of two years after the date on which this section comes into force, if he is granted a certificate of registration under Section 5 at any time before the expiration of the said years.

9. Maximum Rates At Which Interest May Be Decreed :-

Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit whether brought by a money-lender or by any other person in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding 9 per centum in the case of a secured loan and 12 per centum simple per annum in the case of unsecured loan.

10. Maximum Amount Of Interest Which May Be Decreed And Appropriation Of Excess Interest Towards Loan :-

(1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall in any suit whether brought by a money-lender or by any other person in respect of a loan advance, before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realized as interest through Court or otherwise is greater than the amount of the loan originally advanced.

(2) Where, in any suit, as is referred to in Sub-section (1), it is found that the amount already realized as interest through Court or, otherwise, for the period preceding the institution of the suit is greater than the amount of the loan originally advanced, so much of the said amount of interest as is in excess of the loan shall be appropriated towards the satisfaction of the loan and the Court shall pass a decree for the payment of the balance of the loan, if any.

(3) Where a decree passed by a Court on the 1st April, 1936 or thereafter, on the basis of a loan remains unsatisfied in whole or in part on the date on which the Orissa Money-lenders (Amendment) Act, 1947 (Orissa Act XVII of 1947) comes into force, the Court which passed the decree or the Court or other authority to which the decree is sent for execution shall, on the application of the

judgment-debtor, exercise the powers specified in Sub-section (2) and the decree shall be modified accordingly.

11. Power To Re-Open Certain Transactions And Appropriate Excess Interest Towards Loans :-

(1) In any suit whether brought by a money-lender or by any other person in respect of a loan advanced before the commencement of this Act, the Court shall exercise all or any of the following powers as may be applicable to it, namely :

(i) re-open the transaction, take an account between the parties and relieve the debtor of all liability in respect of any interest in excess of nine per centum simple per annum in the case of a secured loan other than a loan of grain and twelve per centum simple per annum in the case of an unsecured loan other than a loan of grain and twenty-five per centum simple per annum in the case of a loan of grain;

(ii) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any interest, in excess of nine per centum simple per annum in the case of secured loan other than a loan of grain and 12 per centum simple per annum in the case of an unsecured loan other than a loan of grain and twenty-five per centum simple per annum in the case of a loan of grain;

(iii) appropriate excess interest referred to in Clauses (i) and (ii) realized through Court or otherwise towards the satisfaction of the loan;

(iv) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the money lender has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that nothing contained in this sub-section shall be deemed to require the creditor to refund any sum which has been paid to him.

(2) Where a decree passed by a Court on the 1st April, 1936 or thereafter, on the basis of a loan, remains unsatisfied in whole or in part on the date on which this Act comes into force, the Court which passed the decree, or the Court or other authority to which a decree is sent for execution shall on the application of the judgment-debtor, exercise all or any of the powers specified in Sub-section (1).

12. Court May Order Payment Of Amount Due On Mortgage By Installments :-

Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may at the time of passing the decree, in any suit relating to a mortgage by which any loan is secured, order that payment of any amount decreed in such suit shall, subject to such conditions as the Court may impose, be made by installments :

Provided that before fixing the installments the Court shall take into consideration the re-paying capacity of the judgment-debtor and shall satisfy itself that the judgment-debtor is in a position to pay the installments on the due dates : -

Provided further that simple interest at 6 per centum per annum may be allowed on the decretal amount till the date of payment or sale.

13. Power To Direct Payment For Amount Decreed In Respect Of A Loan Or On Mortgage By Installments :-

(1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may for reasons to be recorded in writing at any time, on the application of a judgment debtor after notice to the decree holder, direct that the amount of the decree passed before or after the commencement of this Act, in respect of a loan including any decree in a suit relating to a mortgage by which a loan is secured shall be paid in such number of installments and subject to such conditions on the dates fixed by it as having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

(2) Any person aggrieved by an order passed under Sub-section (1) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.

14. Court To Estimate The Value Of Judgment-Debtors Property :-

(1) When an application is made for the execution of a decree passed in respect of a loan or the interest on a loan by the sale of the judgment-debtors property, the Court executing the decree

shall notwithstanding anything to the contrary contained in any other law or in anything having the force of law, hear the parties to the decree and estimate as prescribed the value of such property and of that portion of such property the proceeds of the sale of which it considers will be sufficient to satisfy the decree :

Provided that the Court may order the whole property of the judgment-debtor to be sold if it is satisfied that by reason of the nature of such property or any other special circumstances such property cannot reasonably or conveniently be sold in part.

(2) Any person aggrieved by an order passed under Sub-section (1) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.

15. Only Sufficient Portion Of Judgment-Debtors Property To Be Sold :-

(1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan or the interest on a loan shall include only so much of the property of the judgment-debtor the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree, and such property shall not be sold at a price lower than the price specified in the said proclamation :

Provided that if the property to be sold is immovable property and the decree-holder specifies which portion of such property should be sold, the Court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold :

Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation the Court may sell the property for such highest amount if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation.

(2) Any person aggrieved by an order passed under Sub-section (1) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.

16. Sections 10 To 15 To Apply To Certain Pending Suits, Appeals And Execution Proceedings :-

The provisions of Sections 10 to 15 shall, so far as may be, apply-

- (i) to suits whether brought by money-lenders or by any other person in respect of loans advanced before the commencement of this Act, and pending on the date on which the said sections come into force; and
- (ii) to appeals and proceedings in execution arising in respect of decrees passed on the 1st April, 1936 or thereafter on the basis of loans whether such appeals or proceedings in execution were pending on, or instituted after, the date on which the said sections come into force.

17. Discharge Of Possessory Mortgage :-

(1) Notwithstanding anything to the contrary contained in any law or anything having the force of law or in any contract, any possessory mortgage which is executed either before or after the commencement of this Act shall, unless discharged previously, stand discharged after the expiration of a period of seven years from the date of the Mortgage.

(2) On the discharge of the mortgage as aforesaid, the mortgagee shall deliver to the mortgagor all documents in his possession or power relating to the mortgaged property and shall transfer the property to the mortgagor and put him in possession thereof at his cost free from the mortgage and from all encumbrances created by him and those claiming under within three months from the date of expiry of the aforesaid period of seven years :

Provided that in cases where the said period of seven years has expired prior to the 22nd day of September, 1975, the delivery of documents and the delivery of possession of the property as aforesaid shall be effected within three months from the said date.

(3) In case of the death of the mortgagor before the delivery of possession, the mortgagee shall deliver possession of the said documents and the mortgaged property to the successor-in-interest of the mortgagor.

(4) Where the mortgagee is unable to ascertain or is in doubt as to who is the successor-in-interest, he shall make an application within the period allowed for delivery of possession to the Court which is competent to entertain a suit in respect of the mortgaged property for taking over possession and management of the property and custody of the documents whereupon the Court shall appoint a receiver and thereupon, the provisions contained in Order XL of the Code of Civil Procedure, 1908 (6 of 1908) shall, so far as may be, apply.

(5) Any person claiming to be the successor-in-interest of the mortgagor may apply to the Court within twelve years from the date of appointment of the receiver for possession of the property whereupon the Court shall determine if the applicant or any other person is the successor-in-interest and for the said purpose the Court shall, as far as may be, follow the procedure provided in Part-X of the Indian Succession Act, 1925 (89 of 1925).

(6) After such determination, the Court shall deliver possession of the property along with the documents and the amount, if any, which has accrued from the income of the property to the person who is found by the Court to be the successor-in-interest.

(7) If no application is made under Sub-section (5) within the period specified therein or if on such an application being made no person is found to be the successor-in-interest and the said period has already elapsed, the property along with the amount, if any, which has accrued from its income shall lapse to the State Government.

Explanation-For the purpose of this section any mortgage in pursuance of which the mortgages is in possession and enjoyment to the mortgage security in satisfaction of the mortgage debt either in whole or in part shall be deemed to be a possessory mortgage.

17A. Power Of Certain Officers To Enforce Delivery Of Possession Of Property :-

1[(1) Where the mortgagee fails to deliver possession of the mortgaged property to the mortgagor or his successor-in-interest as required under Sub-section (2) of Section 17 and the mortgagor is opposed or impeded in taking possession of the property the mortgagor may make an application to the Sub-Divisional Officer or the Tahasildar having jurisdiction over the area in which the property is situated, to enforce delivery of possession of such property.

(2) On receipt of an application under Sub-Section (1), the Sub-Divisional Officer or, as the case may be, the Tahasildar shall take or cause to be taken such steps or use or cause to be used such force as may reasonably be necessary, for securing the delivery of possession of the property to the mortgagor.]

1. Inserted vide Orissa Act No. 18 of 1986.

CHAPTER 4

CHAPTER IV

18. Power To Cancel Registration Certificate :-

(1) Where in any suit brought in respect of a loan by a registered money-lender, or in respect of any security taken for a loan by a registered money-lender the Court is of opinion that the registered money-lender has been guilty of fraud, the Court shall make an order recording a finding to that effect and fixing a period not

exceeding three years as it thinks fit during which the registration certificate granted to the money-lender shall remain cancelled.

(2) Where an order under Sub-section (1) is made by a Court exercising original jurisdiction, an appeal shall lie from it, within such period as may be prescribed, to the Court to which appeals from the decrees passed by such Court ordinarily lie, and the decision of the appellate Court shall be final; but no appeal shall lie from an order made under Sub-section (1) by an appellate Court in an appeal from a decree of a Court exercising original jurisdiction.

(3) A copy of every order made under Sub-section (1) or Sub-section (2) shall be sent to the Collector by the Court concerned and the Collector shall, after the order has become final, cancel the registration certificate granted to the money-lender for the period mentioned in the order.

(4) When the certificate of a registered money-lender has been cancelled under Sub-section (1) such money-lender shall not be entitled to make any application under Section 5 during the period in which such order of cancellation remains in force, but such cancellation shall not preclude the money-lender from instituting suits in respect of loans advanced by him before the date of the order of such cancellation.

18A. Power Of The Sub-Divisional Officer And The Tahasildar To Cancel Registration Certificate :-

(1) If the Sub-Divisional Officer or the Tahasildar is satisfied that any registered money-lender carrying on the business of money-lending within his jurisdiction has charged interest at a rate higher than the rate specified in Section 7-A, he may pass an order for cancellation of the certificate of registration granted to the money-lender and may disqualify him from being registered as money-lender for such period not exceeding three years, as may be specified in the order:

Provided that no order canceling the certificate of registration shall be passed without giving the money-lender a reasonable opportunity of being heard.

(2) An order passed under Sub-section (1) shall forthwith be communicated to the concerned money-lender by the authority who has passed the order.

(3) Any person aggrieved by an order canceling a certificate of registration may, within one month from the date of communication of the order prefer an appeal-

(a) if the order is passed by a Tahsildar, before the Sub-Divisional Officer; and

(b) if the order is passed by a Sub-Divisional Officer before the Collector.

(4) On receipt of an appeal under Sub-section (3), the appellate authority may stay the operation of the order appealed against.

(5) The Collector may transfer an appeal preferred under Sub-section (3) to any officer subordinate to him who is above the rank of a Sub-Divisional Officer, for hearing and disposal.

(6) All orders passed under Sub-section (1) shall, subject to the order passed in an appeal, if any, be final and shall not be called in question in any Court.

(7) An order passed under Sub-section (1) shall, if it is not set aside in appeal, if any, be communicated by the authority passing the order to the concerned Sub-Registrar who shall thereupon make necessary corrections in the register of

money-lenders maintained by him.

(8) The cancellation of the certificate of registration of money-lender shall not affect his right to realize the loans advanced by him in accordance with the provisions of this Act prior to such cancellation, but he shall not be entitled to the refund of any fee paid in respect of such certificate.

18B. Power Of The Government To Require Money-Lenders To Produce Records :-

(1) The State Government may, from time to time, by notification require the money-lender or money-lenders belonging to any class or carrying on business in any local area, to produce before such authority and by such date as may be specified in the said notification, all records relating to their business including documents evidencing advance of loans.

(2) The authority specified in the notification referred to in Sub-section (1) shall scrutinize the documents with a view to determining if the transactions exceed the amount for which the money-lender has obtained the registration certificate and shall, after giving the money-lender a reasonable opportunity of being heard, pass an order declaring the particulars of transactions that are within the amount specified in the said certificate.

(3) The order referred to in Sub-section (2) shall be published by affixture in the notice-board of the authority passing the order and copies thereof shall also be sent to the Block Development Officer and the Tahasildar within whose local limits of jurisdiction the money-lenders principal place of business is situate for publication by affixture in the notice-boards of their offices.

(4) If the authority referred to in Sub-section (2) is satisfied that a money-lender has transacted business in excess of the amount specified in his registration certificate, he may issue an order canceling the said certificate and may also disqualify him from being registered as a money lender for such period not exceeding three years as may be specified in the order.

(5) An order made under Sub-section (2) or Sub-section (4) shall forthwith be communicated to the concerned money-lender by the authority who has made the order.

(6) Any person aggrieved by an order passed under Sub-section (2) or Sub-section (4) may, within one month from the date of communication of the said order, prefer an appeal before such authority as may be specified in the notification referred to in Sub-section (1).

(7) An order passed under Sub-section (2) or Sub-section (4) shall, subject to the order passed in an appeal, if any, be final and shall not be called in question in any Court.

(8) No Court shall entertain any claim in respect of any loan advanced prior to the date of the order referred to in Sub-section (2) unless the particulars thereof are contained in the said order and all suits in respect of such claims shall stand abated.

(9) An order passed under Sub-section (4) shall, if it is not set aside in appeal, if any, be communicated by the authority passing the order to the concerned Sub-Registrar who shall thereupon make necessary corrections in the register of money-lenders maintained by him.

(10) Subject to the provisions of Sub-section (8), the cancellation of the certificate of registration of a money-lender shall not affect his right to realize the loans advanced by him in accordance with the provisions of this Act prior to such cancellation, but he shall not be entitled to the refund of any fee paid in respect of such certificate.

18C. Voluntary Cancellation Of Registration :-

1[Where any money-lender registered under this Act desires not to carry on the

business of money-lending, he may make an application to the authority who granted him the certificate of registration for the cancellation of such registration and the authority may, after making such enquiry as it deems fit, cancel the registration of the applicant.]

1. Inserted vide Orissa Act No. 7 of 1977.

19. Penalties :-

(1) Any money-lender who-

(a) carries on business as such without being registered as a money-lender; or

(b) receives interest at a rate higher than the rate specified in Section 7-A; or

(c) actually advances an amount less than the amount shown in his accounts, registers, pawn-tickets or other documents relating to the loan;

2[(d) takes from the debtor or intended debtor any document in which any entry or entries left blank;

shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.]

(2) Any money-lender who without sufficient cause-

(a) falls to put the mortgagor or his successor-in-interest, as the case may be, in possession of the property as required by Sub section (2) or Sub-section (3) of Section 17; or

1[(aa)in the case of a possessory mortgage within the meaning of Section 17 which is discharged prior to the completion of a period of seven years from the date of the mortgage, fails to put the mortgagor or his successor-in-interest, as the case may be, in possession of the mortgaged property within three months from the date of such discharge; or]

(b) fails to make an application to the Court as required by Sub - section (4) of that section;

shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

(3) Any money-lender or his agent who contravenes any provision of this Act shall, on conviction, if such contravention is not punishable under Sub-section (1) or Sub-section (2), be punishable with fine which may extend to one thousand rupees.

1. Inserted vide Orissa Act No. 7 of 1977.

2. Inserted vide Orissa Act No. 18 of 1986.

20. Penalty For Taking Premium :-

If after the commencement of this Act, any money-lender or his agent takes from a debtor at the time of advancing a loan or deducts out of the principal of such loan any premium or other exactions of a similar nature by whatever name called or known, such money lender or his agent, as the case may be, shall be punishable with fine, not exceeding twice the amount of such premium or exaction.

20A. Abetment To Be An Offence :-

Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted.

Explanation-For the purposes of this Act, "abetment" has the meaning assigned to it in the Indian Penal Code (45 of 1860).

20B. Offences To Be Tried By Executive Magistrates Summarily :-

(1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of the offences under this Act, and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class or of the second class, as the case may be.

(2) An offence under this Act may be tried summarily by a Magistrate.

20C. Cognizance Of Offences :-

Every offence under this Act shall be cognizable and billable.

CHAPTER 5

MISCELLANEOUS

21. Powers Of Court Under The Usurious Loans Act, 1918 Not Affected By This Act :-

Save as otherwise provided in Section 11 nothing in this Act shall affect the powers of a Court under the Usurious Loans Act, 1918 (X of 1918).

22. Contract For Payment Outside The State, Void :-

Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, any contract entered into between a money-lender and his debtor in respect of a loan advanced after the commencement of the Act providing for the

payment of the amount due on such loan at any place outside the State of Orissa shall, to that extent, be void, but this section shall not apply to contracts in respect of goods supplied on khata or on credit.

23. Power To Deposit In Court Money Due On Loan :-

(1) When a debtor tenders to a money-lender or his agent money on account of any interest due on a loan or an account of a principal of a loan and the money-lender or his agent refuses to receive the amount tendered or refuses to grant a receipt for the same, the debtor may deposit, in any Court in which the money-lender might have instituted suit for the recovery of such interest or such loan, to the account of the money-lender the amount tendered as aforesaid.

(2) The Court shall thereupon forthwith grant a receipt for the deposit under the seal of the Court and cause a written notice of the deposit to be served upon the money-lender.

(3) The money-lender may at any time within three years after the date of the service upon him of the notice mentioned in Sub-section (2) make an application to the Court praying for the amount deposited as aforesaid to be paid to him.

(4) If no application is made under Sub-section (3) within the period mentioned in the said sub-section, the amount deposited shall be disposed of in the prescribed manner.

(5) Upon receipt of an application under Sub-section (3) the Court may order such amount to be paid to the applicant upon such terms and subject to such conditions as may be specified in the order.

24. Courts Receipt To Operate As Acquittance :-

A receipt given by the Court under Sub-section (2) of Section 23 shall operate as an acquittance for the amount deposited as aforesaid in the same manner and to the same extent as if that amount had been received by the money-lender to whose credit the deposit was made, on the date of such deposit.

25. Restriction On Repayment Void :-

A debtor may repay the whole or any part of the principal or interest due under a loan to the money-lender at any time and in any manner and any agreement between a money-lender and a

debtor to the contrary imposing restrictions on the freedom of repayment shall be illegal and void.

Explanation-An agreement entered into by a debtor prohibiting either absolutely or conditionally, repayment of the principal or interest due under a loan until after the expiry of a certain period of time shall be void.

26. Power To Make Rules :-

(1) The State Government may make rules for the purpose of carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice that the generality of the foregoing provisions, the State Government may make rules- -

(a) prescribing the form of the register mentioned in Sub-section (1) of Section 4-A and the particulars to be contained in such a register;

(b) prescribing the form of the registration certificate mentioned in Sub-section (4) of Section 5;

(c) prescribing the particulars to be contained in an application made under Sub-section (1) of Section 5;

(d) prescribing the registration fee to be paid on the applications made under Sub-section (1) of Section 5;

(e) providing for and regulating the supply of copies of the account mentioned in Clause (a) of Section 7;

(f) providing for and regulating the grant of periodical statement of account to a debtor signed by the money-lender or his agent showing the balance of amount that might be outstanding against such debtor on account of the principal and interest at the time of furnishing the said statement and the amount of every payment received by the money-lender in respect of the loan and the date of such payment during the period to which the statement relates;

(g) prescribing the particulars to be contained in a plaint in a suit by a money-lender as defined in Sub-clause (1) or Sub-clause (2) of Clause (j) of Section 2;

(h) for estimating the value of the property under Section 14;

(i) prescribing the period for appeal under Sub-section (2) of Section 181; and

(j) prescribing the manner in which deposits made under Sub-section (4) of Section 23 shall be disposed of.

(3) A draft of the rules proposed to be made under this section, shall be laid on the table of the Orissa Legislative Assembly and the rules shall not be made unless the Assembly by resolution,

approves the draft either without modifications or addition or with modifications or additions but, upon such approval being given, the rules may be made in the form in which they have been approved and such rules shall have force and effect after previous publication in the Official Gazette.

27. Repeal Of Enactments :-

The Madras Debtors Protection Act, 1934 (Madras Act VII of 1935), Usurious Loans (Central Provinces Amendment) Act, 1934 (C.P. Act XI of 1934), and the Central Provinces Money-lenders Act, 1934 (C.P. Act XIII of 1934), and Section 3 of the Agency Tract Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917), in their application to the State of Orissa, are hereby repealed.

Transitory provision under Section 12 of the Orissa Money-lenders (Amendment) Act, 1975 (Orissa Act 54 of 1975) as amended by Orissa Money-lenders Amendment Act, 1970 (Orissa Act 17 of 1978).

12. Moratorium on execution of decree against indigent debtors-All proceedings in the execution of a decree obtained by a money-lender in respect of a loan advanced by him to an indigent debtor pending in a Court of law on the date of coming into force of this Act shall remain in abeyance for a period of five-years from the said date and all applications for execution of any such decree filed after the said date but before the expiration of the said period of five years shall remain in abeyance for the remainder of that period.

Explanation-For the purposes of this section -

(a) "money-lender" shall mean a money-lender as defined in the Orissa Money-lenders Act, 1939 (Orissa Act 3 of 1939) and

(b) "indigent debtor" shall mean a debtor who -

(i) owns land not exceeding two and a half acres and whose principal source of income is agriculture and allied occupations; or

(ii) is an agricultural laborer owning no land or landless than the extent referred to in Sub-clause (i)."