
(1971) 02 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 695 of 1970

Kapur Singh

APPELLANT

Vs

Firm Bhagwan Dass
Sat Pal

RESPONDENT

Date of Decision: Feb. 12, 1971

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 25

Citation: (1973) 2 ILR (P&H) 70

Hon'ble Judges: Harbans Singh, J

Bench: Single Bench

Advocate: D.S. Chahal, for the Appellant; Harbans Lal, for the Respondent

Judgement

Harbans Singh, C.J.

This revision has arisen in the following circumstances:

On 15th June, 1967, a suit was filed by firm Bhagwan Dass Sat Pal Bhatinda (hereinafter referred to as the plaintiff-firm) against Kapur Singh for the recovery of Rs. 945.00, Rs. 700/- as principal and Rs. 245 as interest in respect of money borrowed on 17th June, 1964. Inter alia the objection taken in the written statement filed on 31st July, 1967, was that the plaintiff firm was a money lender Replication was filed by the plaintiff firm on 25th August, 1967, in which it was admitted that the firm was a money-lender and a certificate of registration under the Punjab Registration of Money lenders" Act, 1938 (III of 1938), herein-after referred to as the Act, was filed, which was valid till 8th June, 1968. No specific issue was framed with regard to the question, whether the suit was liable to dismissal on the ground that the plaintiff firm was not duly registered or whether it held a valid licence, but under the issue of relief, the learned trial Court held as follows:

The plaintiff has produced money lenders licence Exhibit P.D. This licence is valid upto 8th of June, 1968, i.e., upto a date much before the decision of the suit. So Clause (b)

stands excluded. Now there is no material, muchless any evidence to show that the plaintiff was registered and held a valid licence on the date of institution. The plaint does not state so. The licence does not bear the date of issue. The statement of the plaintiff on this point is silent. Therefore, the suit of the plaintiff has to be dismissed.

On appeal, the first appellate Court held as follows:

I find that there should have been a specific issue on this point. Therefore, I frame the following issue:

Whether the appellant held a Money Lending Licence at the time of the institution of the suit or at the time of decreeing the suit ?

He asked for a report under Order 41, Rule 25, Code of Civil Procedure, thus keeping the appeal on the record of the appellate Court.

After remand, evidence was recorded by the trial Court and a report sent.

2. The facts brought out on the record are that it was on 30th June, 1967, that an application for the grant of a licence u/s 5 of the Act was made. Exhibit P.D. was consequently, issued, which was valid up to 8th June, 1968. It is further in evidence that no request for the renewal of this licence was made till an application in this respect was made on 4th February, 1969, These facts are stated by Budh Ram, a clerk from the office of the Collector, who was examined by the plaintiff-firm. The date on which renewal was effected by the Collector is not on the record, But there is an endorsement on the back of Exhibit P.D. wherein it is stated as follows:

Renewed upto 8-6-71 with penalty of Rs. 2/-.

3. On the basis of this report and the evidence, the learned Additional District Judge held that in view of the fact, that the endorsement indicates that the licence had been renewed up to 8th June, 1971, it must be held that the plaintiff firm had the money-lender's licence at the time of the decision of this suit. In view of this, the appeal was accepted and the suit was decreed for Rs. 700/- and the costs of the appeal. Admittedly, the plaintiff firm was not entitled to any costs of the suit or interest, Kapur Singh being aggrieved has filed this revision.

4. The contention of the Learned Counsel for the petitioner before me is that the evidence on the record does not give any indication what ever that the licence Exhibit P.D. was in force and valid on 1st January, 1969, the date on which the suit was disposed of by the trial Court.

The relevant part of Section 3 of the Act runs as under:

Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan, or an application by a money-lender for the execution of decree relating to a loan, shall, after the commencement of this Act be dismissed unless the money-lender-

(a) at the time of the institution of the suit or presentation of the application for execution; or

(b) at the time of decreeing the suit or deciding the application for execution-

(i) is registered; and

(ii) holds a valid licence, or

(iii)....

(iv) if he is not already a registered and licenced money-lender satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending provided that in such a case the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of licence pending before the Collector is finally disposed of.

Section 4 deals with the question of registration and Section 5 with the grant of licences
Section 5 runs as under:

Every money lender may apply to the Collector for a licence which shall be granted for such period, in such form, and on such conditions, and on payment of such fees, as may be prescribed. Explanation.-When an application for the renewal of a licence has been received from a licenced money-lender before the expiry of his licence, the existing licence shall be deemed to continue in force until orders on the application have been issued.

Section 6 of the Act provides for the cancellation of the licence under certain eventualities with which we are not concerned Section 7 of the Act provides how the action is to be taken by the Collector in this respect and Section 8 provides for effect of cancellation of licence and when the licence is cancelled the name of the money-lender concerned is struck off from the register of money-lenders.

5. One thing is quite clear that according to the provisions of Section 3 of the Act either on the date of the institution of the suit or on the date of its decision, the plaintiff money-lender has to show to the satisfaction of the Court, first, that he is registered as a money-lender and, secondly, that he holds a valid licence u/s (sic) of the Act. In case he is not registered, but has filed an application for being registered and for being issued a licence then, if he brings this matter to the notice of the Court, the Court must stay proceedings and see what is the result of the application made by the plaintiff. It appears

that in case his application is granted, he will be considered to have complied with the provisions of Section 3 provided the licence granted is valid till the date of the decree, and in case the registration is refused, then he would not have complied with the said provisions.

6. In the present case, it is now not disputed that on the date of the institution of the suit, the plaintiff firm was neither registered nor held a licence. The only question is whether on the date of the decision by the trial Court that is, 1st January 1969, the plaintiff-firm was a registered firm under the Act. The sole question, therefore, is whether the plaintiff firm held a valid licence on that date.

7. Admittedly the application for renewal was made on 4th February, 1969, and this licence, as originally granted, was valid up to 8th June, 1968, so that on 1st January, 1969, the plaintiff-firm did not possess a valid licence. The question for determination, therefore, is whether the subsequent renewal of the licence up to 8th June, 1971, would have retrospective effect or not. In view of the provisions of Section 5 if the application for renewal had been made before the date of the expiry of the licence and an order was made subsequently, the licence would be taken to have continued in force throughout the intervening period.

8. The Learned Counsel for the plaintiff-firm has not been able to draw my attention to any rules made under the Act, which provided for retrospective effect even when the renewal application is made months after its expiry. In fact, the Learned Counsel was not in a position to say whether there were any rules made under this Act or not. I have, however, been able to lay my hands on these rules in Land Code, Volume II at page 155, The Punjab Registration of Money-lenders Rules, 1939 (hereinafter referred to as the Rules) prescribe method of applying for registration, for grant of licences and for renewal. Rule 12 of the Rules provides for the fee that is payable on an application for renewal of the licence. Clauses (b) and (c) of Sub-rule (1) of Rule 12 are in the following terms:

(b) For the renewal of licence for the district in which the money-lender is first registered. Three rupees a year.

(c) For the grant or renewal of licence for every other district to which validity of the licence may be extended. Two rupees a year.

As regards the date of the filing of the application, Rule 14 of the Rules is in the following terms:

An application for the renewal of a licence shall be made not less than one month before its expiry; Provided that the Collector may for sufficient reasons condone a delay not exceeding one month on payment of a penalty of two rupees.

There is no other rule regarding the date on which an application can be made. Under Rule 14 of the Rules therefore, an application for renewal of the licence, which expired on

8th June 1968, could be made latest by 8th June, 1968, and that also if the Collector was satisfied that there were sufficient reasons for the application not having been made earlier. The note in the endorsement on the back of Exhibit P.D, "with penalty of Rs. 2/- " is no indication whatever that the renewal application, which was made on 4th February, 1969, that is, nearly eight months after the expiry of the validity, was charged in respect of the entire delay. The presumption would be that this delay could not possibly have been condoned. It was for the plaintiff-firm to bring on the record the facts establishing that the total amount of fee was paid by it and the order of the Collector condoning the delay and allowing the renewal with retrospective effect from its original expiry was passed. The material on the record, therefore, establishes only two things, first, that the plaintiff-firm was not registered nor had any licence under the Act on the date of the institution and, secondly, that on the date of the decision of the trial Court no doubt the plaintiff-firm was registered but did not possess a licence which was valid on that date.

9. The Learned Counsel for firm vehemently argued that an appeal is a continuation of the suit and, consequently, if the licence is produced by the plaintiff-firm in the Court of appeal, that would be sufficient compliance with the provisions of Section 3 of the Act. I am afraid there is no justification for such a contention. No doubt an appeal is a continuation of the suit, but that is only in some respects, i.e. any change in the law which has taken place between the date of the decree and the decision of the appeal or any change of fact can be taken into consideration by the Court of appeal so that its appellate decree is in conformity with the existing law and the facts. But this principle has certainly no application to a case where the law requires certain formalities to be complied with either at the time of the institution of the suit or on the date of its decision by the trial Court. In the present case it is further clear from the wording of Sub-clause (iv) of Section 3 of the Act, that the intention of the Legislature clearly was that the suit should not be disposed of till it is found out whether the licence is being granted to the plaintiff or not. If the production of a licence even before the appellate Court was good enough, then there was hardly any need for providing stay of the proceedings to enable the plaintiff to produce the licence.

10. The latest case on the point, of our own High Court is *Mst. Ram Rakhi and others v. Kehar Singh and others* 1956 Cur. L.J. (Ph.) 759, J.N. Kaushal, J., at page 762 of the report, after noticing the observations in the Full Bench decision of the Lahore High Court in AIR 1942 298 (Lahore), to the effect that the intention of the Act is that a money-lender may get himself registered or licenced before the date of the passing of the decree, went on to observe as follows:

The rulings, which have been relied upon by the learned District Judge are mainly those where in the Courts have taken note of change in law while deciding an appeal. No case has been cited wherein the principle of the appeal being a continuation of the suit may have been applied when a party was required to comply with certain provisions of law at the time of the institution of the suit.

For this reliance was placed by the learned Judge on a Madhya Pradesh ruling in [Shyamlal Ramkrishna Agarwal and Another Vs. Takhatmal Bodhraj and Another](#), It may be noticed that the principle of the appeal being the rehearing of the suit was not applied to a pre-emption suit by a Full Bench of this Court in Ramji Lal and Anr. v. The State of Punjab and others ILR (1966) 11 b. 125, There it was held that the licence can be produced only in the trial Court and if the same is not produced, then the suit has to be dismissed, The revision was, consequently, accepted and the judgment of the lower appellate Court set aside and that of the trial Court, dismissing the suit, was restored

11. Similar view was taken by P.D. Sharma, J. in Parkash Chand v. Mukand Singh (1965) P.L.R. 67 S.N. (No. 78), (R.S.A. 1118 of 1963, decided on 12th February, 1965), There in, fact, the application by the plaintiff was pending with the Collector, but this fact was not brought to the notice of the trial Court and the suit was dismissed, The plaintiff produced the licence granted to him before the appellate Court, which was Lot accepted as sufficient compliance. In second appeal this judgment was upheld and the learned Judge observed as follows:

There can be no dispute that the provisions of the Punjab Registration of Money Lenders Act applied to this case and in terms of Section 3 thereof the trial Judge was justified in dismissing the plaintiff-appellant's suit because he had not obtained required certificate at the time the suit was filed or it was decided. He also did not intimate to the Court that he was not already a registered and a licenced money lender, that he had applied to the Collector to be registered and licenced and that such an application was pending, In the circumstances, the trial Court rightly dismissed the plaintiff's suit.

Learned Counsel relied upon a judgment of Dua J. (as he then was) in Mst. Chahi Devi and others v. Jita (1964) 66 P.L.R. 340, That was, however, a case u/s 22 of the Pepsu Money Lenders" Act (fa of 1956) the provisions of which are not part materia with that of Section 3 of the Act. Section 3 of the Act specifically provides for dismissal of the suit unless there is compliance by the plaintiff with the provisions of the said section, as reproduced above, whereas u/s 22 of the Pepsu Money Lenders" Act the only thing provided is that the suit shall not be proceeded with till the plaintiff money-lender satisfies the Court that he has obtained a money lenders licence. The provisions being not Pari materia, this authority has no bearing.¹² For the reasons given above, therefore, I find that the learned lower appellate Court acted outside its jurisdiction in accepting the appeal and decreeing the suit. The plaintiff-firm not having complied with Section 3 of the Act. the suit could not possibly be decreed. Consequently, I accept this revision, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court The Respondent will bear the costs of the petitioner in all the Courts.