(1968) 11 MP CK 0003

Madhya Pradesh High Court

Case No: F. A. No. 6 of 1967

Ghanshyamdas and others		APPELLANT
	Vs	
Ghasilal		RESPONDENT

Date of Decision: Nov. 27, 1968

Acts Referred:

- Limitation Act, 1908 - Section 19

Citation: (1969) JLJ 426 : (1969) MPLJ 501

Hon'ble Judges: Shivdayal, J; S. M. N. Raina, J

Bench: Division Bench

Advocate: A.R. Naokar, for the Appellant; B.D. Gupta, for the Respondent

Judgement

Shivdayal, J.

This is defendants'' appeal from a decree for Re. 25,737. 71 P. and interest pendente lite and future till realisation at 4% per annum.

Firm Mangturam Jhuthalal advanced loans from time to time to the defendants'' firm. On February 28, 1962, the defendants signed an entry in the books of account of the creditor Firm. The suit loan was allotted to plaintiff Ghasilal when there was a partition of the joint Hindu family Firm Mangtulal Jhuthalal. The suit was for recovery of Rs. 25,737.71 P. as principal, Rs. 3,925.29 P. as interest, and Rs. 7.60 P. as notice costs; total RS. 29,670.60 P. The defendants resisted the suit on several grounds, two of them only need be mentioned. It was contended that the entry dated February 28, 1962, in the plaintiff''s books of account could not be the basis of the suit as it was a mere acknowledgment. Secondly, the plaintiff being a moneylender, the defendants were entitled to the benefit of the Moneylenders Act.

The trial Court held that the suit was maintainable but the plaintiff, being a moneylender within the meaning of the Act, was not entitled to any interest because he did not comply

with the mandatory provisions of the Act. However, the plaintiff was allowed proportionate costs.

In this appeal Shri Naokar has raised three contentions; (i) that the entry dated February 23, 1962 could not be basis of the suit; (ii) the Court was bound to reopen the accounts of 12 years preceding the date of the suit; and (iii) costs could not have been allowed to the plaintiff as he had not complied with the provisions of the Moneylenders Act.

The entries (Exh. P. 1) which the plaintiff filed in the trial Court are these:

(1) The first entry is of Phalgun Badi 30, Samvat 2015 (corresponding to March 9, 1959). Rs, 19,078-15-6 was the balance outstanding on Kartik Sudi 2, Samvat 2015 (March 18, 1958). To this was added Rs. 3,162-0 6 as interest at 8 annas per cent, per month, Rs, 102 was relinquished. The debtors agreed to pay Rs. 22,241 in these words:-

(2) The other entry is dated February 28, 1952, in which outstanding balance is shown as Rs. 21,741.71 P and interest RS 3,996 from Phalgun Badi 30; Samvat, 2015 (corresponding to March 9, 1959) is added The defendants signed the following statements:-

In both these entries there are not only words "Baqi lene Rahe" and "Baqi dene Rahe", but also an agreement to pay interest at a specified rate. Thus both these transactions were not mere acknowledgments of liability within the meaning of section 19 of the Limitation Act, 1908, but furnished by themselves a right within the meaning of section 25 (3) of the Contract Act to recover the amount. Therefore, each gave rise to a fresh cause of action to the plaintiff for maintaining the suit. [See AIR 1949 229 (Nagpur) . and Hiralal and Others Vs. Badkulal and Others, .]. The first contention is, therefore, rejected.

Adverting to Shri Naoker"s second contention, we shall refer to the relevant provisions of the Moneylenders Act, 1934, which came into force on January 1, 1959, when it was extended to the whole of Madhya Pradesh by Act No. 38/1958. u/s 2, clauses (vi) and (vii)"interest" and "loan" are defined thus:

(vi) "Interest" included 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, whether or not such interest is capitalised within twelve years from the date of the last transaction.

(vii) "loan" means an actual advance made within twelve years from the date of the last transaction whether of money or in kind at interest and shall include any transaction, which the Court finds to be in substance a loan, but it shall not include: -

(a) a deposit of money or other property in a Government post office bank or any other bank or in a company or with a co-operative society;

(b) a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment;

(c) a loan advanced by any Government or by any local authority authorised by any Government;

(d) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act, 1913;

(e) an advance made on the basis of a negotiable instruments as defined in the Negotiable Instruments Act, 1881, other than a promissory note;

(f) a transaction which is a charge created by operation of law on or is in substance a sale of immovable property;

(g) a loan advanced to an agricultural labourer by his employer;

Under section 3 every moneylender is enjoined to regularly maintain an account and to furnish every year a statement of account to the debtor. Sub- section (2) reads thus:

The account required under clause (a) of sub-section (1) shall be so maintained that items due by way of interest shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The moneylender shall not, in the absence of agreement, include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new annual account:

Provided that... ... ...

Section 7 of the Act then provides for consequences of non-compliance with the requirements of section 3. Clauses (b) and (o) read thus:

(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 plaintiff''s 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 cost; and,

(c) If the Court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the money-lender, it shall in computing the amount of interest due upon the loan, exclude every period for which the money lender omitted duly to furnish the account as required by that clause:

Provided that if the money-lender has after the time prescribed in that clause, furnished the account and the plaintiff satisfied the Court that he has sufficient cause for not furnishing it earlier the Court may, notwithstanding such omission, include any such

period or periods for the purpose of computing the interest:

Section 8 of the Act is a saving clause. It runs as follows:

The provisions of sections 3, 4, 5, 6 and 7 shall not apply to any loan made before this Act comes into force:

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force is made after this Act comes into force, such transaction shall be subject to the provisions of those sections.

Now, admittedly there were dealings between the parties before January 1959, the date of the commencement of the Act (for purposes of this suit). It is also not in dispute that nothing further was advanced in cash by the plaintiff to the defendants nor did the defendants made any repayment to the plaintiff after the last mentioned date. But the aforesaid two entries on which the plaintiff relies are dated March 9, 1959, and February ''28, 1902. The appellant''s contention is that u/s 7 (b, of the Act the Court was bound to disallow interest found due in both these entries. In these entries there are two items of interest, i. e. Rs. 3,162-0-6 and Rs. 3,996; total Rs. 7,158-0-6, which are included in the sum of Its. 25,737.71 P, the amount decreed. It is further contended that it was the duty of the Court to reopen the accounts of 12 years preceding the last transaction i. e., dated February 28, 1962, in order to see whether the amount of Rs. 19,078-15-6 also included interest which had been capitalised within 12 years from the said date of the last transaction.

Shri Gupta, learned counsel for the respondent, seeks protection u/s 8. His argument is that proviso to section 8 does not apply because there was no ''transaction'' after coming into force of the Act. The learned counsel argues that the execution of the entries did not constitute their transactions within the meaning of the Moneylenders Act, inasmuch as that word must be restricted in its connotation to a ''dealing'' where money is ''advanced'' as loan or where there is any ''repayment'' of a loan. We are unable to accept this argument.

Under the principal part of the section, loans made before the Act came into force have been saved from the application of the provisions of sections 3, 4, 5, 6 and 7 of the Act. These provisions do not apply to any ''loan'' made before the Act came into force. But the proviso makes the provisions of the aforesaid sections applicable ''if any fresh transaction in respect of a loan made before this Act comes into force is made after the Act comes into force''. The section makes a clear distinction between a ''loan'' and a ''transaction''. ''Transaction'' is the genus of which ''making a loan'' is a species. The word ''Transaction'' is not defined in the Act. It is not a term of art, not of extraordinary or technical meaning; and must be read in the ordinary sense of the term. It is a general word of wide connotation. A literal interpretation must be given to it. It means an Act, doing, agreement, covenant, negotiation or dealing, etc. In Oxford Dictionary, amongst other meanings we

find "an arrangement", an agreement, a covenant, an adjustment of a dispute, a compromise". In Brewin v. Short (1865) 5 E and B 227 (235). the meaning of the word "transaction" was considered in these words:

Looking to the language of section 133, the word "transaction" as here used has not any extraordinary or technical meaning but is used in its ordinary sense of "art, "doing", "negotiation" or "dealing", as defined in common dictionaries.

Again in Krebel v. The Great Central Gas Co. (1870) I R 5 Exch. (289,294 295). it was observed:

Section 133 of the Bankruptcy Act, 1849, uses words "contract", "dealing" and "transaction" "Transaction" in a general word and is thus defined in, Webstor"s Dictionary: "Doing" or "performing"; business that which is done; or an affair.

So also in Bendir v. Anson (1936) 3 ARE R 326 (330), Lord Fright M. R. while interpreting the words of R. S. C. Order 16, rule 1, observed thus:

The phrase "transaction or series of transactions" is not a term of art, and I cannot find in the authorities any precise definition of the exact scope of those words..... .....The word "transaction", I think, necessarily means an art, the effect of which extends beyond the agent to other persons.

It is stated in 87 Corpus Juris Secundum 887:

The word "transaction" is derived from the Latin words "trans" and "ago" meaning to carry on, or "agoro" meaning to drive. It is not a legal and technical word, but rather it is common and colloquial; a general word of comprehensive import, broad and flexible in meaning the word "transaction" in frequently used to denote some thing done; something which has been transacted. "Transaction" is some times defined as meaning an act; an act of performing; an act of transaction or conducting business .. .... The word is applicable generally to business affairs and to doings, proceedings, and negotiations affecting property rights, contracts, agreements and the negotiations resulting in contracts and agreements, and, in transfer of titles, or the obligation of one or both of the parties to do certain specified things, and it includes all that takes place in the conducting of any item of business or an affairs (Italics ours).

We are clearly of the opinion that execution of a fresh bond or a fresh agreement to pay the money outstanding in respect of a loan advanced earlier is a "fresh transaction in respect of such loan", within the meaning of the proviso to section 8 of the Moneylenders Act, Accordingly, we hold that in the present case the two entries of March 9, 1959, and February 28, 1962, are undoubtedly transactions. Firstly, as we have held earlier, there is a promise to pay and each of them afforded a fresh cause of action for maintaining a suit. Each of them was, therefore, a fresh transaction in respect of a loan within the meaning of the proviso to section 8 of the Act, Each of them is an agreement; if that was not so,

the suit itself was not maintainable on the basis of the transaction of February 28, 1962. Secondly, the first entry dated November 18, 1958, shows that a sum of Rs. 102 was relinquished which means that there was a "compromise" or "settlement" between the parties. There-fore, it was a fresh transaction. Thirdly, the making of an entry in the plaintiff"s books of account and the defendants" putting their signatures must certainly be held to be a business affair, and, therefore, a : transaction".

In this view of the matter, and since both the transactions dated November 18, 1958, and February 28, 1962, were made after the Act came into force, and since the plaintiff being a money leader did not comply with the provisions of section 3 of the Act, the two items of interest totalling Its 7,158-0-6 was bound to be disallowed.

Learned counsel for the respondent, relies on Jhokhiram v. Hardattrai 1956 N L J 481, where it has been held that mere acknowledgment cannot be regarded as Fresh transaction within the meaning of the proviso to section 8 of the Moneylenders Act. But that decision is not apposite. Here, it is not mere acknowledgment, but there is a contract and a promise to pay, as we have held while rejecting the first contention of Shri Naokar.

The question remains whether the sum of Rs. 19,072-15-6 also contains capitatised interest. That question becomes relevant for the purpose of calculating the amount of interest from the date of the suit to the date of the decree inasmuch as the trial Court has awarded pendente lite interest on the principal sum alone. u/s 34 of the Code of Civil Procedure, interest pendente lite can be awarded on the principal sum adjudged. Since the pro-visions of the Moneylenders Act become applicable to the present suit by virtue of proviso to section 8 of that Act, the principal sum will be the loan within the meaning of section 2 (vii) of the Act which means the Actual advance given as loan within 12 years from the date of the last transaction. It will, therefore, have to be seen what the Actual sums advanced by the plaintiff to the defendant within 12 years preceding the date of the last transaction i. e. February 28, 1962 were. This enquiry may be made in the executing Court.

Shri Naoker"s third contention is that the trial Court erred in awarding costs of the plaintiff, when there was non-compliance with the provisions of section 3 of the Moneylenders Act. In our opinion, u/s 7 (b) the matter is discretionary with the Court. It may or may not disallow costs. Here the trial Court has exercised its discretion in allowing corresponding costs. We see no reason to interfere.

In the result, the appeal is partly allowed, it is held that the suit is maintainable on the basis of the entry dated February 28, 1962, in the plaintiff"s books of account; but the plaintiff is not entitled to the amount of interest as shown in the entries dated March 9, 1959, and February 28, 1962. The plaintiff is entitled to KB. 18,679.67 P., instead of Rs. 25,737.71 P. as decreed by the trial Court. The decree of the trial Court allowing interest at 4 annas per cent, per month from the date of the suit till realisation is maintained. Principal shall be calculated on the total of the outstanding balance on February 28, 1948,

and such principal sums as the plaintiff actually advanced to the defendants between that date and March 9, 1959. Each party shall get proportionate costs in this Court according to its success