

Modhusudano Mollana vs Kontaru Naiko And Others on 6 August, 1965

Equivalent citations: AIR 1966 SUPREME COURT 1857, 1965 2 SCWR 773, 1965 SCD 1129, 32 CUTLT 1, 1966 (1) SCR 345, 1966 (1) SCJ 645, ILR 1965 CUT 889

PETITIONER:

MODHUSUDANO MOLLANA

Vs.

RESPONDENT:

KONTARU NAIKO AND OTHERS

DATE OF JUDGMENT:

06/08/1965

BENCH:

ACT:

Orissa Money-Lenders Act, 1939 (Act 3 of 1939), s. 5(4) :
Orissa Money Lenders Rules, 1939, r. 5-Registration
certificate under r. 5 providing for maximum capital to be
invested in business-No such provision in Act-Rule providing
for maximum capital whether valid.

HEADNOTE:

The appellant filed a suit against the respondents for the recovery of Rs. 8216 due on a promissory note executed by respondent No. 1 for a sum of Rs. 6000. The plea taken in defence was that the suit was not maintainable because the registration of the appellant under s. 5(4) and r. 5 of the Orissa Money Lenders Act 1939 had become void on account of the money lent being in excess of the maximum amount of Rs. 2,000 which the appellant was authorised to invest in the business by his registration certificate. The contention was not accepted by the trial court but the High Court, accepting it, dismissed the suit. In appeal, before this Court, by special leave, it was urged on behalf of the appellant that the main Act did not provide for any restriction on the amount of capital that could be invested and that the rules went beyond the Act in making such a provision.

HELD : In the absence of any specific provision in the Act providing for the fixing of the maximum capital which a money lender can invest in money-lending business, it was

not open to the State Government to frame a rule in that regard and the rules framed by it about mentioning, in the application, the maximum capital for which the registration certificate was wanted and the mention in the certificate of the amount of the maximum capital for which the certificate is granted, do not lead to the conclusion that the registration of the money-lender will become void if it exceeds the limit of the maximum capital laid down in the registration certificate. [348 D]
Sant Saranlal v. Parsuram Sahu [1966] 1 S.C.R. 335, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 167 of 1964. Appeal by special leave from the judgment and decree dated April 11, 1962 of the Orissa High Court in First Appeal No. 61 of 1959.

A. V. Viswanatha Sastri and T. V. R. Tatachari, for the, appellant.

A. N. Sinha and B. P. Jha, for respondents Nos. 1 and 2. The Judgment of the Court was delivered by Raghubar Dayal, J. This appeal, by special leave, is against the decree of the High Court of Orissa reversing the decree of the Court of the Subordinate Judge, Berhampur and dismissing the plaintiff's suit for recovery of Rs. 8,216 due on a promissory note executed by Kontaru Naiko, defendant No. 1 for Rs. 6,000.

The plaintiff money-lender obtained a registration certificate under s. 5(4) and r. 5, of the Orissa Money- Lenders Act, 1939 (Act III of 1939), hereinafter called the Act, and the rules thereunder, on March 31, 1952. He obtained another registration certificate in 1955 which said that the maximum capital for which the certificate is granted is Rs. 8,000.

The plaintiff advanced the loan to defendant No. 1 on May 19, 1954 and sued for the recovery of the amount due on this loan. It was contended for the defendant that the suit was not maintainable as the maximum capital for which the plaintiff had required the registration certificate in 1952 was Rs. 2,000 and under the provisions of the Act. and the rules framed thereunder, he could not have advanced loan in excess of that amount and that his doing so made the registration of the appellant as a money-lender void and therefore the suit for recovery of Rs. 2,000 even was not maintainable. These contentions were not accepted by the trial Court which decreed the suit against the defendants with 'the direction that defendants Nos. 2 and 3 sons of defendant No. 1, were not personally liable and were liable to the extent of the assets of their father in their hands. The High Court, however, took a different view, accepted the aforesaid contentions of the defendants and dismissed the suit.

The sole contention for the appellant is that the High Court was in error in holding that the registration of the appellant as a registered money-lender in March 1952 became void when he advanced a loan in suit in excess of Rs. 2,000 in 1954 and that the High Court was also in error in

holding that he could not have advanced the loan in excess of the maximum capital for which the registration certificate was wanted.

The relevant provisions of the Act may now be set out. 'Capital', is defined in S. 2(c), to mean that which a moneylender invests in the business of money-lending whether in money or in kind. 'Registered money-lender', according to S. 2(m), means a person to whom a registration certificate has been granted under S. S. Section 5 provides for the registration of moneylenders and a registration fee. Sub-s. (1) thereof requires the applicant for registration to mention in the application particulars mentioned in' that sub-section and 'such other particulars as may be Sub-s. (3) empowers the Provincial Government 3 47 to prescribe by rules for different classes of money-lenders and for different areas a registration fee not exceeding Rs. 25 to be paid by an applicant for registration. Sub-s. (4) empowers the Sub-Registrar to grant a registration in the prescribed form to the applicant except where the certificate previously granted to him has been cancelled under s. 18 and the order of cancellation is in force. Section 6 enacts that the registration certificate granted will be in force for 5 years from the date on which it is granted. Section 7 provides for the registered money-lender to maintain accounts and to give receipts. Section 8 which provides for suits for recovery of loans by registered money-lenders reads :

"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 loan 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 the 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."

Section 9 provides for the maximum rates at which interest may be decreed. Various other sections deal with other matters which the legislature thought fit to provide for in order to achieve the object of the Act which, according to the preamble, is to regulate money-lending transactions and to grant relief to debtors in the State of Orissa. Rule 1, clause (c), of the Orissa Money-Lenders Rules, 1939, defines 'maximum capital' to mean the highest total amount of the capital sums which may remain invested in a money- lending business on any day during the period of the registration certificate. Rule 3, cl. (iii), requires every application for the registration of a money-lender to mention the maximum capital for which the certificate is wanted. Rule, 4 lays down the registration fees payable and fixes the fees according to the maximum capital in respect of which an application for such certificate is made. Rule 5 provides that registration certificate would be in Form in and that during the currency of a registration certificate application may be made for a registration certificate of a higher denomination and the provisions of rr. 3 to 5 shall, as far as may be, apply to it, credit being given to the registration fee already paid by the applicant. The question for decision in this case is practically the same as came up for decision before this Court in Sant Saranlal v. Parsuram Sahu(1) judgment. in which has been delivered today. The relevant provisions of the Bihar Money- Lenders Act, 1938 and the Bihar Money-Lenders (Regulation of Transactions) Act, Act mentioned above.

What we have said in that case appropriately covers the contentions of the panics in this case. We do not therefore consider it necessary to repeat the discussion of the various contentions in this case. We hold that in the absence of any specific provision in the Act in this case providing for the fixing of the maximum capital which a money-lender can invest in money-lending business, it was not open to the State Government to frame a rule in that regard and that the rules framed by it about mentioning, in the application, the maximum capital for which the registration certificate was wanted and the mention in the certificate of the amount of the maximum capital for which the certificate is granted, do not lead to the conclusion that the registration of the money-lender will become void if he exceeds the limit of the maximum capital laid down in the registration certificate. We do not consider it necessary now to decide the other point raised with respect to the retrospective operation of the registration certificates of higher denomination obtained during the currency of a registration certificate. We accordingly allow the appeal, set aside the decree of the Court below and restore the decree of the trial Court. We direct the respondents to pay the costs of the appellant in the High Court and this Court.

Appeal allowed.

(1) [1966] S.C.R.335.