

Supreme Court of India

Gajanan And Ors vs Seth Brindaban on 20 July, 1970

Equivalent citations: 1970 AIR 2007, 1971 SCR (1) 657

Author: I Dua

Bench: Dua, I.D.

PETITIONER:

GAJANAN AND ORS.

Vs.

RESPONDENT:

SETH BRINDABAN

DATE OF JUDGMENT:

20/07/1970

BENCH:

DUA, I.D.

BENCH:

DUA, I.D.

SHELAT, J.M.

CITATION:

1970 AIR 2007

1971 SCR (1) 657

1970 SCC (2) 360

ACT:

C.P. Money Lenders, Act 13 of 1934, ss. 11F and 11H-Act debarring carrying on of money lending business in any district without valid registration certificate in respect of that district-Certificate held for one district-Isolated transaction in another district whether void for contravention of Act-Stare Decisis-English authorities, value of.

HEADNOTE:

The plaintiff (,respondent herein) was doing money-lending business in Yeotmal District in former Central Provinces (now Madhya Pradesh) and had obtained the requisite licence under the C. P. Money lenders' Act, 1934 for that district in August, 1947. The licence was regularly renewed thereafter. In 1947 the plaintiff gave a loan to the defendants in Chanda District against the security of property situated in that District. In 1950 he filed a suit for foreclosure. The trial court held that since the transaction in question was in contravention of ss. 1 IF & 11H of the C. P. Money Lenders' Act the suit was not maintainable. The High Court however decided in favour of the plaintiff on the view that an isolated transaction in another district does not come within the mischief of the

Act. With certificate appeal was filed in this Court. The appellant relied on the decision of the House of Lords in *Cornelius v. Philips*.

HELD: (i) The case of *Cornelius v. Phillips* was distinguished by the Nagpur High Court in *Pati Ram v. Baliram*. The Madhya Pradesh High Court also in *Janki Bai's* case distinguished *Cornelius v. Phillips* observing that it would be unsafe to call in aid the decision relating to the interpretation of s. 2 of the English Act for construing s. 1 IF of the C. P. Act. The Bombay High Court in *Hajarimal's* case took the same view. It was correctly held in these cases that the provisions of the English Act construed in *Cornelius* and of the C. P. Act were not completely identical. [665 G-H; 666 F]

(ii) From the scheme of the Act and the definition in s. 2(v) it is evident that for a person to be a money-lender he must, in the regular course of business, advance a loan. There is a long catena of authorities on the statutes regulating and controlling money-lenders in which the expression money-lender has been so construed as to exclude isolated transaction or transactions of money-lending. [667 F-668 C]

(iii) Section 11 F on plain reading only prohibits the carrying on of the business of money-lending in any district without holding a valid registration certificate in respect of that district. It does not prohibit and, therefore, does not invalidate an isolated transaction of lending money. Such an isolated transaction is outside the rigour of the prohibition. The fact that a registered money-lender in one district has entered into an isolated transaction of lending money in another district in which he is not registered would not make any difference in this respect and such isolated transaction would not be hit by the prohibitory mandate. 'Section 11-H also operates only against the suits by money-lenders on loans advanced by them and would similarly exclude from its purview a suit on an isolated transaction not entered into by a money-lender in the regular

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course of business. Interference with freedom of contract appears to have been limited under the Act only to the extent necessary for regulating and controlling the business of money-lending. Section 11C which provides for composition of offences also suggests that individual transactions are not considered void. The view of law taken by the Nagpur and M. P. High Courts in *Patiram*, *Hajarimal* and *Janki Bai* was thus in conformity with the statutory intendment and must be held to be correct. [668 G669 D]

(iv) People in arranging their affairs are entitled to rely on decision of the highest court which appears to have prevailed for a considerable length of time and it would require same exceptional reason to justify its reversal when

such reversal is likely to create serious embarrassment; for those who have acted on the faith of what seemed to be the settled, law. Where the meaning of the statute is ambiguous and capable of more interpretation than one, and one view accepted by the higher court has stood for a long period during which many transactions such as dealing in property and making of contracts have taken place on the faith of that interpretation, the court would ordinarily be 'reluctant to put upon it a different interpretation which would materially affect those transactions. Therefore, the established view in the matter of the interpretation of s. 11-F of the C.P. Act on which the High Court relied in the present case could not be departed from, since it is not so patently erroneous that it must be upset. The fact that contravention of s. 11-F(i) of the Act is made a penal offence is an additional factor against the propriety of over-ruling the established view. Further the legislature made several amendments in the Act in 1965 but did not amend s. 11-F; it may, therefore, be rightly inferred that the view taken by the Courts in its interpretation was not considered to be contrary to the legislative intentment. [669 E-F; 670 A-F]

On the above view of the law the present appeal must be dismissed.

Cornelius v. Phillips [1918] A.C. 199 distinguished.

Patiram v. Baliram 1953 N.L.J. 517, 522; Hajarimal v. Hari Narayan (1965) 67 Bom. L.R. 816; and Janki Bai v. Ratan Melu A.I.R. 1962 M.P.: 117 (FB) approved and applied.

Whiteman v. Sadler 1918 A.C. 199, Wasudeo Bhairulal v. Ramchandra (1958) 60 Bom. L.R. 1247, Sitaram Sharwan v. Bajya Parnay A.I.R. 1941 Nag. 177; Hari Prasad v. Sobhanlal M.F.A. 124 of 1956 dated December 18, 1957-1958 M.P.L.J. Note no. 11 Gurmukh Rai v. Hari Har Singh S.A. No. 39/1961/d/26.3.1964-M.P.L.J. note 102, Chaith Ram v., Baparimal C.R. 374/1959/ d/1.7.1960 -1960 M.P.L.J. note 198 and Kishanlal v. Laxmibai S.R.P. 109/1962d 20.7.1962-1963 M.P.L.J. 119referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1982 of 196(6.

Appeal from the judgment and decree dated October 21, 22, 1965 of the Bombay High Court, Nagpur Bench in Appeal No. 43 of 1960 from original decree.

V. M. Tarkunde, V. N. Swami and A. G. Ratnaparkhi, for the appellants.

M. C. Chagla, Rameshwar Nath and Swaranjit Sodhi, for the respondent.

The Judgment of the Court was delivered by Dua J. This is an appeal with certificate under Art. 133(i)

(a) of the Constitution by Gajanan and his two sons Janardhan and Nanaji who figured as defendants 1, 4 and 5 respectively in the suit instituted by Seth Brindaban, respondent in this appeal. It is directed against the judgment and decree of the Bombay High Court (Nagpur Bench) dated February 7, 1966 allowing the plaintiff's appeal in part against the dismissal of his suit by the trial court, and granting him a decree for Rs. 1,60,000 against the appellants. The other two defendants, Rajeshwar and Narhari, were also the sons of Gajanan; the dismissal of the suit against them was upheld by the High Court. The suit for foreclosure of three mortgages was instituted on December 1, 1950. The plaintiff claimed a decree for foreclosure of the mortgages : the mortgage amount due was stated to be Rs. 1,07,269/2/- with future interest. The suit was contested on various grounds but the main point with which we are concerned in this appeal was raised in the amended written statement allowed by the court on December 15, 1959, nine years after the institution of the suit. According to the amended plea : (i) the plaintiff being a money lender within the meaning of C. P. Money Lenders' Act, (XIII of 1934) and no certificate under s. 1 IF of that Act having been secured by him the transaction in dispute was void and the suit was, therefore, incompetent, (ii) production in court of moneylender's licence was necessary for the maintenance of the suit; and (iii) the plaintiff had not maintained proper accounts of the moneylending business and had not given Diwali notices to the defendant in respect of this debt and this omission disentitled him to claim interest.

Seven additional issues were framed on the amended pleas. They are mainly concerned with the provisions of the Money- lenders' Act. The trial court repelled the plaintiff's submission that the case was governed by the Bombay Moneylenders' Act. It was contended on his behalf that with effect from February 1, 1960 the provisions of C.P. & Berar Moneylenders' Act had ceased to apply to the territory in question and in its place the Bombay Moneylenders' Act was made applicable. The Bombay Act was thus claimed to govern this case. Disagreeing with this submission the trial court held the Bombay Act to be prospective only and, therefore, inapplicable to pending cases. The present suit which had been instituted in 1950 in respect of a transaction of 1947 was accordingly held to be governed by the provisions of the C.P. & Berar Moneylenders' Act. The plaintiff was found to have contravened ss. 11 F and 11 H of the C.P. Act and, therefore, disentitled to maintain the suit. He was also held disentitled to claim interest as he had not sent statement of accounts as required by that Act. As regards the liability of defendants 2 and 3, they were held not to be bound by the mortgages, but it was observed that a simple money decree could be passed against them provided the claim was otherwise legally enforceable. In case the plaintiff's claim deserved to be decreed then in the trial court's view there had to be three decrees because there were three mortgages covering three separate properties. The share of defendant No. 5 was also held to be bound by the three mortgages dated September 12, 1947. The registration of documents at the instance of the court was found to be proper and lawful. The decision in the previous suit was held to operate as *res judicata*. The suit, as observed earlier was dismissed on the ground of violations of the C.P. Act.

On appeal to the High Court the following seven points fell for determination :

"(1) Was the appellant a moneylender within the meaning of the C. P. and Berar Moneylenders' Act and was he required to obtain a moneylender's licence for Chanda District because the transaction pertains to property in Chanda district ?

(2) Were the documents duly attested vis-a-vis respondents 2 and 3 who had appended their signatures to the documents ? If it is held that the documents were not attested so far as defendants 2 and 3 are concerned, what will be the effect on the liability of defendants 2 and 3 ?

(3) Could a personal decree for payment of money be passed against defendants 2 and 3 ? (4) Is the appellant entitled to claim interest because of his failure to send statements of account as required by section 3

(b) of the C. P. and Berar Moneylenders Act ? Was the appellant liable to maintain accounts as provided by section 3 (a) of the Moneylenders Act ?

(5) Are the three instruments validly registered or the registration void ? (6) Are the findings on issues 1 to 6 in the present suit barred on the principle of res judicata because the subject matter of these issues was also the subject matter of identical issues in the previous litigation finally decided between the, parties ?

(7) Could a decree be passed against respondent No. 5 after he attained majority, respondent No. 5 not having himself executed the instruments sued upon?"

On behalf of the plaintiff (appellant in the High Court) it was stated that he had made an application for the certificate but had not yet obtained the same. The High Court held that s. 11H of the C.P. & Berar Moneylenders' Act did not apply to the case. It, however, observed that the court would have normally granted time to the plaintiff to produce the necessary certificate if the Act had been held applicable. In the opinion -of the High Court the plaintiff was doing moneylending business in Yeotmal District and had obtained the requisite licence for that district in August, 1947 which was thereafter regularly renewed. The transaction in question was held to be an isolated transaction which did not clothe the plaintiff with the character of a moneylender carrying on the business of moneylending in Chanda District. It further observed that though the transaction in question related to property at Chanda and payment was also made at Chanda, the amount was paid from the Wani shop where the accounts were maintained. This was in Yeotmal District for which the plaintiff held the necessary certificate. On this view the High Court dis- agreed with the conclusion of the trial court. The High Court further added that it was not the defendants' case that the plaintiff had been carrying on money lending business in Chanda District after 1950 or in 1959 or even in April, 1960 when the suit was decided. The three documents executed by the court were also held to be duly executed and duly registered so as to be binding on defendants 1, 4 and

5. In regard to defendants 2 and 3, the High Court felt that even a money decree could not be passed against them and the suit against them must fail in its entirety. The conclusion of the trial court that the decision in the previous suit operated as res judicata was upheld. In the final result the plaintiff

was held entitled to a decree for the principal sum of Rs. 80,000 on the basis of the three mortgages and a further sum of Rs. 80,000 by way of interest, the total amount being Rs. 1,60,000. This decree was made against defendants 1, 4 and 5. They were given six months' time to pay up the amount with further interest at 6% per annum on the principal amount till realisation. If the amount was not paid the mortgages were to stand foreclosed. The suit against defendants 2 and 3 was dismissed without costs.

On appeal in this Court the principal question raised centres round the provisions of the C. P. & Berar Moneylenders' Act.

This Act which came into force on April 1, 1935 was enacted with the object of making better provision for the regulation and control of the transactions of moneylending so as to secure protection to ignorant debtors against the evil of fraud and extortion on the part of unscrupulous moneylenders without unduly interfering with freedom of private contract. It was framed broadly on the lines of the Punjab Regulation of Accounts Act (No. 1 of 1939) but it embodied, in addition, the principle of Damdupet so that the creditors were not encouraged to postpone unconscionable enforcement of their claims. The courts were also empowered to fix instalments for execution of decrees. "Moneylender" as defined in cl. (v) of s. 2 means a person who in the regular course of business advances a loan as defined in this Act and it includes his legal representatives and successors in interest. "Loan" as defined in cl. (vii) means an actual advance whether of money or in kind at interest and it includes any transaction which the Court finds to be in substance a loan. It does not include inter alia an advance made on the basis of a negotiable instrument other than a promissory note. In 1940 this Act was amended by C.P. & Berar Act XIV of 1940 and ss. 11-A to 11-J were added. In the definition of "moneylender" also it was added in the end : "and moneylending shall be construed accordingly". According to s. 11-B every person carrying on or intending to carry on the business of moneylending is required to get himself registered by an application made to the Sub- Registrar of -any sub-District of the District or anyone of the districts'in which he carries on or intends to carry on such business. The registration certificate does not entitle the holder thereof to carry on the business of moneylending in other districts for which he does not hold such certificate. Section 11F debar a person from carrying on the business of moneylending in any district unless he holds a valid registration certificate in respect of that district. Sub-section (2) of this section makes contravention of this section a penal offence punishable with fine extending to Rs. 100/- and in case of a previous conviction the fine may extend to Rs. 200/-. According to S. 11H no suit for the recovery of a loan advanced by a moneylender is to proceed in a civil court until the court is satisfied that he holds a valid registration certificate or that he is not required to have such a certificate by reason of the fact that he does not carry on the business of money lending in any of the districts of Madhya Pradesh. The question which arises for consideration in this case is whether the suit out of which this appeal arises is incompetent and whether the transaction of money lending is void and, therefore, unenforceable in courts of law.

On behalf of the appellants strong reliance was placed on the decision of the House of Lords in *Cornelius v. Phillips*(1). In that case, distinguishing and explaining an earlier decision of the (1) [1918] A.C. 199, (2) [1910] A.C. 514, House of Lords in *Whiteman v. Sadlor* (2) s. 2 (2) of the Moneylenders' Act, 1900 (63 & 64 Vic. c. 51) was held to have the effect of rendering void a

transaction of moneylending carried out at an hotel at some distance from the moneylender's registered address in contravention of s. 2(1)(b). The transaction was held to amount to a carrying on of his business by the moneylender. Relying on the ratio of this decision it was urged before us on behalf of the appellants that the transaction in question in the present case must be held to be void and, therefore, unenforceable in courts of law. A similar argument on the authority of this decision was raised before a Bench of the Nagpur High Court in *Patiram v. Baliram*(1) but was not accepted. The case of *Cornelius v. Phillips* 2 ) was distinguished and it was observed :

"The learned counsel for the applicant then relied on the House of Lords decision in *Cornelius v. Phillips*(2) which was a case under the English Moneylenders' Act. The question which had arisen in that case was the same as the question in this case, namely whether the transaction was void or it only exposed the moneylender to liability for criminal proceedings without rendering the transaction void. It was decided in that case that the transaction amounted to a -carrying on of his business by the moneylender at an address other than his registered address in contravention of section 2 sub-section (1) b) of the Moneylenders' Act, 1900 and that the effect of the Act was to avoid the transac-

tion. A comparison of the English Moneylenders Act, 1900 and the Central Provinces ,and Berar Moneylenders Act, 1934 will clearly show that the two differ on several important points. The definition of "moneylender" in the two Acts is not the same. The former contains provisions regarding "registered name" and " registered address" which are not to be found in the latter. Section 2 (1 ) (c) of the former expressly prohibits individual agreements which is not the case with the latter. So the cases decided under the English Moneylenders Act cannot be of much help in deciding cases under the Central Provinces and Berar Moneylenders' Act. We may here quote the warning given by their Lordships of the Privy Council in *Lasa Din v. Mt. Gulab Kunwar*(3).

'It is they think, always dangerous to apply English decisions to the construction of an Indian Act.' (1) 1953 N.L.J. 517, 522. (2) [1918] A.C. 199. (3) A.T.R. 1932 P.C. 207, 211.

We, therefore, do not propose to discuss the other cases under the English Moneylenders Act cited by the learned counsel for the applicant.

After referring to s. 11B and to Maxwell on Interpretation of Statutes the court observed :

"This special statute which trenches on the contractual rights must be construed strictly against those who seek to avail of it. There are no reasons to suppose that the Legislature intended that every transaction of moneylending made after the amendment came into force till the lender was able to obtain a registration certificate was invalid and unenforceable thereby enriching the debtor at the cost of the creditor without any fault of the latter. The learned counsel has not brought to our notice any compelling reasons to accept his construction which manifestly leads to injustice to

the moneylenders." (p.

523) The final conclusions of the court were expressed in these words "It will be clear from all this discussion that section 11 F applies to the business of moneylending and not to an individual transaction of lending money and that the condition is attached and the penalty is imposed for the convenience of collection of the revenue, and the legislature, did not declare an individual transaction of moneylending made by the moneylender who had not obtained a registration certificate invalid. It is not necessary for the validity of the contract of loan that the moneylender must be registered on the date of the transaction. He, however, cannot obtain a decree on his loan unless he possesses a valid registration certificate on the date on which the decree is to be passed. Though the transactions of moneylending are not affected for want of a registration certificate, a moneylender is exposed to the penalty provided by -section 1 IF of the Act for carrying on the business without a valid registration certificate. We may cite *Shanshir Ali v. Ratnaji*(1) in support."

The appellants' counsel also tried to distinguish the Full Bench decision of the Nagpur Bench in *Hajarimal v. Hari Narayan*(2) (which overruled *Wasudeo Bhairulal v. Ram- chandra*(3) by submitting that the Full Bench had left open the (1) A.I.R. 1952 Hyd. 58 (F. B.) (2) (1965) 67 Bom, L.R. 816.

(3) (1958) 60 Bom. L.R. 1247, question of the transaction entered into by a moneylender in contravention of s. 1 IF being void and opposed to public policy. It is true that this precise question was not considered by the Full Bench to be necessary to decide in that case but the court added :-

"Assuming that the transaction is void, the plaintiff may be able to obtain relief under s. 65 of the Contract Act."

Earlier in the course of -the judgment the learned Chief Justice speaking for the Full Bench had also observed "The principal reason for the contrary view taken in *Wasudeo Bhairulal v. Ramchandra*,(1) is that as s. 11-F prohibits a moneylender from carrying, on the business of moneylending without a valid registration certificate and also provides a penalty for the contravention of this provision, a suit on a moneylending transaction entered into by an unregistered moneylender cannot be maintained. With respect, it may be pointed out that the Legislature itself has not barred a civil suit in respect of such a transaction. The only obstacle which it has placed in the way of a plaintiff in such a case is that the suit shall not proceed until a valid registration certificate has been produced. The Legisla- ture has also in sub-s. (2) of s. 11-F specified the penalty for contravention of the provisions of sub-s. (1) of s. 11-F, that is, for carrying on nioncy lending business without a certificate. It has not prescribed any additional penalty such as that a suit to recover a loan advanced by an unregistered moneylenders shall not lie or shall be dismissed. It is not open to a Court to sub- ject a person to any penalty other than what the Legislature has prescribed."

The decision of the Full Bench of the Madhya Pradesh High Court in *Janki Bai v. Ratan Melu* ( 2) was also referred to with approval. In *Janki Bai's* case ( 2 also the decision of the House of Lords in *Cornelius v. Phillips* 3 ) was distinguished and it was expressly observed that it would be unsafe to call in 'aid the decision relating to the interpretation of s. 2 of the English Act for construing s. 11-F



of the C. P. Act. In regard to the true meaning of s. 11-F the Full Bench, after an elaborate discussion summed up its view thus :

"The considerations having a bearing on the construction of s. 11-F of the Act may now be summed up.

(1) (1958) 60 Bom. L.R. 1247.

(2) A.I.R. 1962 M. P. 117 (F.B) (3) [1918] A.C. 199.

The registration of a moneylender does not afford to his debtors any additional protection not available under the other provisions of the Act. An unregistered moneylender can be punished only for the collective act of carrying on the business of moneylending and not for every loan advanced by him without a registration certificate. In a moneylender's suit, his failure to obtain a registration certificate is not regarded as a vital consideration and is, for that reason, not required to be tried before considering the case on merits. On the other hand, S. 11

-H of the Act envisages that a loan -advanced by an unregistered moneylender can be recoverable by him if he subsequently obtains a registration certificate which is in force at the time of the suit.

These considerations clearly indicate that section 11-F was not enacted for the protection of persons dealing with moneylenders. Its only object appears to be the protection of the revenue. This conclusion is further supported by the fact that the annual fee payable for a registration certificate was subsequently raised from Rs. 4/8/- to Rs. 12/-. Therefore, on the basis of the principles already stated, a loan advanced by an unregistered moneylender cannot be regarded as impliedly prohibited by s. 11 -F." Section 11-F was also held in this decision not to bar individual advances.

The principal question which arises is whether the view of law as taken by the Nagpur High Court in the Pati Ram case in 1953, by a Full Bench of the Madhya Pradesh High Court in the Janaki Bai case in 1961 and by the Full Bench of the Bombay High Court sitting at Nagpur in the Hajarimal case in 1965 is so clearly erroneous that this Court should upset their interpretation of the C. P. Act.

In considering this question we must keep in view the warning given by the Privy Council in *Isadas* that while construing Indian statutes it is dangerous to apply English decisions to the construction of Indian enactments. Now, the C.- P. Act as originally enacted in 1935 was not modelled on the English Act of 1900. Indeed, the English Act which was construed by the House of Lords in *Cornelius* in 1917 was amended in 1927 when ss. 2 and 3-interpreted in *Cornelius*-were repealed. This was long before 1935 when the C. P. Act was enacted- broadly, as already pointed out, on the lines of the Punjab Regulation of Accounts Act 1 of 1930 with the addition of the rule of *Damdapat* and extended power of courts to fix instalments for execution of decrees. We are also inclined to think, in agreement with the decisions of the Nagpur High Court in *Pati Ram* and *Halarimal* and of the Madhya Pradesh High Court in *Janaki Bai*, that the provisions of the English Act construed in *Cornelius* and of the C. P. Act, with which we are concerned, are not completely identical. The statutory schemes of the two enactments do seem to us to differ materially. This has been discussed

at some length in the aforesaid decisions of the Nagpur and Madhya Pradesh High Courts and we do not consider it necessary to enter on an exhaustive discussion and cover the same ground again as we are inclined to agree with the final conclusions arrived at in those cases. Turning to the scheme of the Act which concerns us let us see if the transaction of money lending which is the subject matter of the suit out of which this appeal arises is void and, therefore, unenforceable in courts of law and if for that reason the suit is incompetent. We have already referred to the broad outlines of the Act. We may now examine its scheme more closely to see if the impugned transaction is hit by its prohibitory provisions and the progress of the present suit barred. Before considering its statutory scheme it may be pointed out that though this Act having been initially enacted in what was then known as the Central Provinces and was named "The Central Provinces Moneylenders' Act, 1934" it was later extended to what is now known as the State of Madhya Pradesh with, slight formal modifications not affecting the substance of the statutory scheme. Now it is described as the "M. P. Moneylenders' Act, 1934 Moneylender as defined in s. 2 (v) of the Act means a person who, in the regular course of business advances a loan as defined in this Act and it includes, subject to the provisions of s. 3, the legal representatives and successors-in-interest of the person who advanced the loan; and the expression "moneylending" is also to be construed accordingly. 'By virtue of s. 2 (ix) "Sub-Registrars" appointed under the Indian Registration Act are to function under the present Act. Section 11-A enjoins -every Sub.Registrar to maintain a register of moneylenders in the prescribed form. Section 11-B renders it obligatory for every person who carries on or intends to carry on the business of moneylending to get himself registered by an application to the Sub-Registrar of the sub-district in which he carries on or intends to carry on such business. The application is required inter alia to specify the district or districts in which the applicant carries on or intend, -, to carry on business of moneylending. Section 11- D provides that the registration certificate granted under s. 11-B shall not entitle the holder thereof to carry on the business of moneylending in other districts. Section 11-F which bars persons from carrying on business of moneylending without registration certificate also provides a penalty for the, contravention of this provision, Section 11-G provides for composition of offences covered by s. 11 -F (i). According to s. 11 -H no suit for the recovery of a loan advanced by a moneylender is to proceed in a civil court until the court is satisfied that he holds a -valid registration certificate or that he is not required to have such certificate by reason of the fact that he does not carry on the business of moneylending. From the scheme of these provisions it is evident that for a person to be a moneylender he must, in the regular course of business, advance a loan. There is a long catena of authorities on the statutes regulating and controlling money-lenders in which the expression "moneylender" has been so construed as to exclude isolated transaction or transactions of moneylending. Vivian Bose, J., while dealing with the Act, which concerns us, in Sitaram Sharwan v. Bajya Parnav(1) said :

"The word 'regular' shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business. If only an isolated act of moneylending is shown to the court it is impossible to state that that constitutes a regular course of business. It is an act of business, but not necessarily an act done in the regular course of business."

This decision was followed by T. C. Shrivastava J., of the Madhya Pradesh High Court in Hari Prasad v. Sobhanlal(2) and by Shiv Dayal J., of the same High Court in Gurmukh Rai v. Hari Har Singh(3).

The same view was taken by K. L. Pandey J., of the same High Court in *Chaith Ram v. Baparimal*(1). In this case both s. 2 (v) and s. 11-H of the Act came up for construction. In *Sitaram Sharwan*(5) it was also held that the person seeking advantage of the Moneylenders' Act has to prove that the plaintiff is a moneylender. To the same effect is the decision by 'T. C. Shrivastava J., in *Kishanlal v. Laxmibai*(6).

Section 11-F on its plain reading only prohibits the carrying on of the business of moneylending in any district without holding a valid registration certificate in respect of that district. It does not prohibit and, therefore, does not invalidate an isolated transaction of lending money. Such an isolated transaction seems to us to be outside the rigour of the prohibition. The fact that a registered money lender in one district has entered into an isolated (1) A.I.R. 1941 Nag. 177.

(2) M.F.A. 124 of 1956 decided on December 18, 1957-1958 M.P.L.J. Note no. 11.

(3) S.A.No. 39/1961 d 26.3.1964-M, P.L.J. note 102. (4) C.R. 374/1959 d/1.7.1960-1960 M.P.L.J. note 198. (5) A.I.R. 1941 Nag. 177.

(6) C.P. 109/1962 d/20.7.1962-1963 M.P.L.J. 119, transaction of lending money in another district in which he is not registered would not make any difference in this respect and such isolated transaction would not be hit by the prohibitory mandate. Section 11-H also operates only against the suits by moneylenders on loans advanced by them and would similarly exclude from its purview a suit on an isolated transaction not entered into by a moneylender in the regular course of the business of money lending. The statutory scheme thus clearly seems to indicate that it is only the business of moneylending which is sought to be controlled and individual transactions of lending money do not fall within the mischief which was sought to be remedied by the Act. An individual transaction of lending money has not been declared to be void and as we construe the Act as a whole, interference with freedom of contract appears to have been limited only to the extent necessary for regulating and controlling, the business of moneylending. Section 11-G which provides for composition of offences also suggests that individual transactions are not considered void. We are, therefore, of the opinion that the view of law taken by the Nagpur and M. P. High Courts in *Pati Ram* and *Hajarimal* and *Janaki Bai* is in conformity with the statutory interpretation and is, therefore, correct.

There is also another aspect which may legitimately be kept in view. People in arranging their affairs are entitled to rely on a decision of the highest court which appears to have prevailed for considerable length of time and it would require some exceptional reason to justify its reversal when such reversal is likely to create serious embarrassment for those who had acted on the faith of what seemed to be the settled law. Where the meaning of a statute is ambiguous and capable of more interpretations than one, and one view accepted by the highest court has stood for a long period during which many transactions such as dealings in property and making of contracts have taken place on the faith of that interpretation the court would ordinarily be reluctant to put upon it a different interpretation which would materially affect those transactions. In the case before us the construction placed by the Nagpur and Madhya Pradesh High Courts on the relevant provision of the C. P. Act seems to have been accepted all these years beginning with *Sita Ram Sharwan* in 1941

(except for a short period between 1958 and 1962) and rights to property and under contracts seem to have been founded on the faith of

-that construction. A Division Bench of the Bombay High Court sitting at Nagpur in Wasudeo, of course, dissented in 1958 from the view of the Division Bench of the Nagpur High Court in Pati Ram without referring the point of dissent to a larger Bench. But a Full Bench of the Madhya Pradesh High Court disagreed with the Wasudeo case, vide Janaki Bai.. It, therefore, seems obvious that titles and transactions must have been founded on the view of law which, by and large, stood almost uniformly as enunciated in Sitaram Sharwan in 1941 and later in Pati Ram and it would, in our opinion, be unjust to disturb them by adopting the interpretation suggested on behalf of the appellant on the authority of the English decisions. Now, assuming that two views on the statutory scheme of the Act are possible and assuming the interpretation canvassed on behalf of the appellant to be preferable \*to that accepted in the impugned judgment we are unable to say that the construction adopted in the judgment under appeal is so clearly and patently erroneous that it should, in the larger interests of justice, be upset notwithstanding the fact that it is likely to disturb rights to property and under contracts founded upon this construction. The fact that contravention of s. 11-F(i) of the Act is made a penal offence is an additional factor against the propriety of over-ruling and upsetting the established view unless we feel convinced that the established view is clearly erroneous. As already discussed, we are not so convinced but are on the other hand inclined to agree with the established view.

There is still another circumstance which may appropriately be noticed. Sections 11-C I I -F (i) and 11-G (i) of the Act were amended by M. P. Act 40 of 1965. Had the construction placed by the courts on s. 11-F and other provisions of the Act been considered by the Legislature to be contrary to the legislative intentment, one would have ordinarily expected an amendment clarifying its intention because the Legislature must be fixed with the knowledge of the construction placed on the Act by the courts. No such action was taken by the Legislature. This circumstance is, of course, not conclusive but it is not wholly irrelevant and certainly deserves to be noticed as carrying some presumptive weight. As the appellant was not carrying on the business of moneylending in Chanda District, the single transaction in dispute in that district was not covered by the Act and the suit could proceed in the normal way without a registration certificate.

On the view we have taken the only question which remains to be noticed relates to the argument that there should be three mortgage decrees instead of one. This matter is one of procedure and form and it does not materially affect the substantive rights of the parties. We are, therefore, disinclined on this ground to direct modification of the impugned decree. The appeal accordingly fails and is dismissed but without costs.

G.C.

Appeal dismissed.