

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Second Appeal No.1192 of 1999

Between:

M/s. Boorugu Nagaiah Rajanna

Rep. by its Partner Boorugu Surya Prakash Rao. ... Appellant

And

Joint family of Masetty Venkanna and sons

Rep. by its Karta and Manager Masetty Venkateswara Rao

and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 31.10.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Appellant : Sri V. Hari Haran

^ Counsel for Respondent Nos.3 and 4 : Sri G.S.Krishna Prabhu

^ Counsel for Respondent Nos.1 and 2 : —

< Gist:

> Head Note:

? Cases referred:

(1) 1962 ALT Pg.210

(2) 2006(3) ALD 62

(3) 1972 (2) ALT 149

(4) 1958 (1) An.W.R 415 = LAWS (APH) 1958 (1) Pg.16

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**SECOND APPEAL No.1192 of 1999****JUDGMENT:**

This Second Appeal is preferred by the appellant/plaintiff aggrieved by the judgment and decree dated 19.03.1999 in A.S.No.39 of 1994 passed by the I Additional Chief Judge, City Civil Court, Secunderabad confirming the judgment and decree dated 31.12.1993 in O.S.No.1656 of 1983 passed by the III Additional Judge, City Civil Court, Secunderabad.

2) The facts in nutshell are thus:

a) The case of the plaintiff—firm is that theirs is a partnership firm registered under the Indian Partnership Act; defendants for the purpose of their business borrowing money from it from time to time and making payments by opening 'Katha' (account) in the name of defendants' firm; the further case of the plaintiff is that after giving credit to all the payments made by the defendants from time to time still a sum of Rs.25,826.15 ps. was due and payable upto 04.11.1983.

Hence, the suit.

b) Defendants filed written statement denying the plaint allegations. They contended that plaintiff—firm is not a registered partnership firm; originally Masetti Venkanna started metal business about 70 or 80 years ago as joint family business; subsequently the same was converted into Masetty Venkanna and sons; Venkanna died in 1939; after his death Masetti Hanumaiah Gupta took charge and he also died in 1960; thereafter,

D1 became the head of the joint family business and joint family ceased to exist and partnership firm of M/s.Swastic Metal Products was formed on 16.11.1978 with D2 and his two sons as partners; originally plaintiff—firm was a joint family under the name and style B.N.Rajanna and it is not known when the said joint family business became partnership firm and how it came into existence and they were not informed about the said change; the plea of defendants is that plaintiff—firm has not complied with the provisions of Money Lenders Act; the interest claimed by plaintiff is highly exorbitant. They thus prayed to dismiss the suit.

c) Plaintiff—firm filed rejoinder stating that in view of close relationship between the parties, it has advanced money to the defendants for their business purpose; the accounts were prepared from time to time and defendants used to acknowledge the same in their books of accounts; as the suit transactions are between the close relatives and traders, the provisions of Hyderabad Money Lenders Act are not applicable; they denied the fact that interest charged by them was arbitrary. Thus, they prayed to decree the suit.

d) Basing on the above pleadings, the trial Court framed the following issues:

1. *Whether the plaintiff is a registered firm?*
2. *Whether the joint family of Masetti Venkanna and Son existed at all at the time of the suit transaction commenced?*
3. *To what amount is the plaintiff entitled from the defendant?*

4. *Whether the plaintiff is entitled to claim any interest and if so at what rate?*
5. *Whether the suit is barred by limitation?*

The following additional issue was framed.

“Whether the plaintiff has complied with the provisions of Money Lenders Act and if not what is the effect?”

- e) During trial, PW1 was examined and Exs.A1 to A59 were marked on behalf of the plaintiff. On the other hand, DW1 was examined but no documents were marked on behalf of defendants.
- f) On appreciation of facts and evidence, the trial Court dismissed the suit on the observation that the plaintiff is a registered partnership firm doing money lending business and it has not placed any cogent evidence showing that suit transactions arose **only** between two traders and therefore, the provisions of the Money Lenders Act were not applicable and accordingly dismissed the suit.
- g) Aggrieved, the plaintiff filed A.S.No.39 of 1994 before the Additional Chief Judge, City Civil Court, Secunderabad challenging the Judgment of the trial Court. After hearing both sides, the First Appellate Court dismissed the appeal confirming the judgment and decree passed by the Trial Court.

Hence, the instant Second Appeal by plaintiff.

3) While admitting the instant appeal, this Court framed the following substantial questions of law:

1) Whether the provisions of A.P. (Telangana Area) Money Lenders Act, 1349 Fasli are attracted to the suit loan transaction particularly when both the plaintiffs and the defendants are the traders?

2) Whether said Act has retrospective operation?

3) Whether the suit Khata to the extent to the entries of which have been acknowledged by the defendants can be reopened?

4) The parties in this second appeal are referred as they were arrayed before the Trial Court.

5) Heard arguments of Sri V.Hari Haran, learned counsel for appellant and none appeared for respondents.

6 a) Severely imputing the concurrent judgments of both the Courts below holding that plaintiff's suit was hit by A.P. (Telangana Area) Money Lenders Act, 1349 Fasli (for short "the Money Lenders Act") inasmuch as the plaintiff is a money lender within the purview of said Act and he did not produce his money lending license issued under the said Act for the period prior to 1960, though he was lending money to defendant even prior to 1960, learned counsel for appellant would argue that both the Courts below grossly erred in holding that Act would apply to the suit transaction. He vehemently argued that it is for the defendant to take a specific plea that plaintiff is a professional money lender within the purview of the Money Lenders Act and that he has not complied with the mandatory provisions of

the said Act and therefore, the suit transaction is hit by Money Lenders Act. Thus the burden is on the defendant to establish his plea. However, the defendant has miserably failed to discharge his burden. Regarding the burden of proof he placed reliance on the following judgments:

1) *Komravelli Vara Laxmi vs. Syed Kasim Hussain*¹

2) *B.Srikanth vs. Erukala Laxmi Suvarnamukhi*²

b) He further argued that as per Section 2(4)(g) of the Money Lenders Act, if the loan is advanced by one trader to another trader in the ordinary course of business, the said loan transaction will not come under the definition of 'loan' and thereby the Money Lenders Act would have no application. Above all, a stray transaction of advancing loan that too by one trader to another trader will not attract this Act. On this proposition of law, he cited the decision reported in *Somanath Baraman and others vs. Raja S.V.Jagannatha Rao*³. He would argue, unfortunately the Courts below did not consider this aspect and wrongly held as if the provisions of the Money Lenders Act would apply to the suit transaction and dismissed the suit.

c) Nextly, he argued that suit is filed within the period of limitation and therefore, the said question does not arise. He thus prayed to allow the appeal by setting aside the judgments of the Courts below and decree the suit.

7) **Question No.2:** A perusal of the Money Lenders Act does not show that it has any retrospective operation. This aspect has been dealt with in a

¹ 1962 ALT Pg.210

² 2006(3) ALD 62

³ 1972 (2) ALT 149

decision of this Court reported in *L.Rama Goud vs. Raja Lakshmi Bai*⁴, wherein it was held thus:

“The Hyderabad Money-lenders Act came into operation on Shahrewar 15, 1349-F (July 21, 1940). Obviously the provisions of such a subsequent enactment cannot cover a litigation based on an earlier transaction and also instituted earlier to the operation of the Act. We have examined the provisions of the aforesaid Act and we find nothing in it to give its provisions such retrospective effect.”

This point is answered accordingly.

8) **Question Nos.1 and 3:** The main plank of the argument of learned counsel for appellant/plaintiff as stated supra is that the provisions of the Money Lenders Act have no application to the suit transaction since the monies advanced by the plaintiff to defendant from time to time were in the nature of an accommodation made by one trader to another trader but not a loan within the meaning of Section 2(4) of the said Act. Such an accommodative transactions are exempted from the purview of the loan under Section 2(4)(g) of the Money Lenders Act. Further, the parties are relations and on that count also it can be safely held that the monies adjusted by the plaintiff from time to time were only accommodative in nature. It is also argued that the plaintiff is a merchant of gold and silver, whereas the defendant is doing the bran business as per the admission of DW.1. Therefore, the main business of the plaintiff is not the money lending business and at best it is only an additional business. Therefore, the plaintiff would not come under the definition of ‘money lender’ as

⁴ 1958 (1) An.W.R 415 = LAWS (APH) 1958 (1) Pg.16

explained in Section 2(7) of Money Lenders Act. In that view of the matter, the observation of the Courts below that the plaintiff is a money lender and the suit transaction is a loan which has been in vogue even prior to 1960 and that plaintiff had not filed his money lending license for the period prior to 1960 and therefore, the suit is hit by Money Lenders Act is erroneous.

9) Though not specifically argued, in the Grounds of Appeal it was mentioned that even assuming that plaintiff was a money lender and the advances given by him were the 'loan' within the purview of the Money Lenders Act, still, it cannot be said, the suit transaction is hit by Money Lenders Act. It is because, DW1 in his evidence admitted that the loan transaction between plaintiff and defendant had been in vogue for more than 80 years i.e, the transaction commenced around 1913 AD. Whereas the A.P. (Telangana Area) Money Lenders Act, 1349 Fasli came into force on 21.07.1940 and this Act has no retrospective operation. Therefore, the loan transaction which has been in vogue long prior to the Money Lenders Act came into force will not come within the mischief of the provisions of the Money Lenders Act.

10) To appreciate the above arguments, it is apposite to note the relevant provisions of the Money Lenders Act. The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 Fasli passed by the erstwhile Hyderabad Government, came into operation on 15th Shahrewar, 1349 (21st July, 1940). This Act has no retrospective operation as held in question No.2.

11) The preamble of the Money Lenders Act says:

“Whereas it is expedient to regulate the transactions of money lending and to make better provision for its control”.

Section 2(4) defines loan, which reads thus:

‘loan’ means a loan secured or unsecured, advanced on interest in cash or in kind, and shall include every transaction which is in substance a loan, but shall not include the following: —

(a) xx xx

(b) xx xx

(c) xx xx

(d) xx xx

(e) xx xx

(f) xx xx

(g) a loan advanced by one trader to another trader in the ordinary course of business, in accordance with practice in trade;”

Section 2(7) defines money lender as follows:

*“**Money-lender** means a person including a pawnbroker, who, within the meaning of this Act, only advances loan in the ordinary course of his business or does so along with other business, and shall also include the legal representative of such person and the person claiming to be his representative on the group of succession or assignment or otherwise;”*

Section 3 provides for registration of money lenders.

Section 3(5) reads:

“(a) No money-lender shall carry on in any district the business of money-lending without obtaining a licence provided for in sub-section(2).”

(b) If any person contravenes the provisions of Clause (a), he be punished with rigorous imprisonment for a term which may extend to six months or with fine or with both. The fine imposed shall, in case of default be recoverable as arrears of land revenue. The Collector shall

have power to award punishment under this clause. An appeal against his order shall lie to the Sessions Judge.

(c) An offence under this sub-section shall be cognizable and bailable”.

Section 9 provides for procedure of Courts in suit for recovery of loan:

Section 9(2) reads thus:

“(2) if it is proved that the plaintiff is a money-lender as defined in sub-section (7) of Section 2, but does not hold a licence granted under Section 3, the Court shall dismiss his suit;

(2-A) if it is proved that the money-lender has not complied with the provisions of Clause (a) of sub-section (1) of Section 5, or of sub-section (1) of Section 6, or of Section 8 and the plaintiff’s claim is established in whole or in part, the Court may, in the circumstances of the case, disallow the whole or any portion of the interest due and may disallow the cost wholly or in part.”

12) The above are some of the important provisions. Be that it may, in ***Komravelli Vara Laxmi*** (1 supra) and ***B. Srikanth*** (2 supra), it was held that the burden is on the defendant to establish that the plaintiff is the professional money lender and he contravened the provisions of Money Lenders Act. Now, it has to be seen whether the defendant established the same and whether the suit transaction is hit by Money Lenders Act.

a) It is to be noted that the defendant by way of amendment of the pleadings took the plea that the plaintiff is a money lender and he has not complied with the provisions of the Money Lenders Act and therefore, the suit is liable to be dismissed. Plaintiff, it appears, filed rejoinder stating that in view of the close relationship between the parties and as they are traders, the plaintiff was advancing monies to defendant’s firm for their

business purpose. Coming to the proof, plaintiff himself produced Exs.A.33 to A.54 money lending licences for the years 1960 to 1981 and he was admittedly doing money lending business. When he himself admitted as money lender and produced money lending licences, the defendant need not specifically prove this fact. Then, Exs.A.1 to A.28 would show the monies advanced by the plaintiff to defendant and repayments made by the defendant.

b) In the light of Exs.A.1 to A.28 and Exs.A.33 to A.54, it has to be seen whether plaintiff is a money lender and monies advanced by him are loan within the purview of Money Lenders Act or not. Basing on the admission of defendant to the effect that the plaintiff was doing business in gold and silver and the defendant firm was doing business in bran, it is argued on behalf of the appellant that the plaintiff is not a money lender within the meaning of Section 2(7) of the Money Lenders Act. However, this argument cannot be accepted. **Going** by the definition of money lender, a person, who only advances loan in the ordinary course of his business or doing so along with other business can be called as a 'money lender'. Here, the plaintiff apart from doing gold and silver business, is also doing money lending business as is evident from Exs.A.33 to A.54—money lending licences. Therefore, he squarely falls within the definition of money lender. Then monies advanced by him to defendant are concerned, no doubt Section 2(4)(g) of the Money Lenders Act says that loan advanced by one trader to another trader in the ordinary course of his business shall not fall within the ambit of definition of loan. However, that exemption will apply to the cases where one trader accommodates another

trader by adjusting money out of business relations and to develop goodwill and not out of doing money lending business. It is common knowledge that in business circles, the merchants will mutually help each other by adjusting amounts for their mutual necessities and the borrowers will repay, generally without any interest or with a nominal interest. This is only an act of good gesture among themselves to maintain cordial relation. Such transactions are exempted from the purview of loan within the meaning of the Money Lenders Act. That is not the situation in the instant case. The plaintiff has been lending monies over decades. It is not a stray act either. Though the defendant is stated to be his relation, plaintiff has been collecting interest by maintaining records. Thus, such transactions would fall within the definition of loan but do not fall within the exception. In view of this fact situation, *Somanath Baraman*'s case (3 supra) has no application. Therefore, the Courts below have rightly held that Money Lenders Act would apply to the suit transactions. Admittedly, the loan transaction was going on between them even prior to 1960. However, plaintiff produced his money lending licences for the years 1960 to 1981 only. Therefore, this suit is hit by Section 9(2) of the Money Lenders Act since he had no licence for the period prior to 1960. Hence the suit is liable to be dismissed.

c) At this juncture, one more argument of the appellant has to be mentioned. Basing on the admission of DW.1 to the effect that the money lending transaction was going on between them since more than 80 years, it is contended in the grounds of appeal that as per the said admission, the money lending business was continued from 1913 or so and A.P.

(Telangana Area) Money Lenders Act, 1349 Fasli came into force w.e.f. 21.07.1940 and the said Act has no retrospective operation and therefore, the suit transaction is not hit by the Money Lenders Act. Even if the said admission of DW.1 is taken into consideration, still the argument of the appellant cannot be accepted. By virtue of such admission of DW.1, at best, the money lending transactions between the plaintiff and defendant for the period prior to 21.07.1940 will not be hit by Money Lenders Act because the said Act was not in force by then. However, the transactions which took place from 21.07.1940 onwards till the filing of the suit will certainly come within the purview of the Money Lenders Act. Since plaintiff could not produce the money lending licences for the period prior to 1960, as noted supra, the suit is liable to be dismissed in terms of Section 9(2) of the Money Lenders Act.

13) Before parting, it should be mentioned that learned counsel for appellant argued that suit was filed within time and hence the same was not barred. Both the Courts below held that the suit was filed within the period of limitation. As such, the question of limitation does not arise.

14) In view of the above findings, there are no merits in this appeal and the same is accordingly dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 31.10.2017
Murthy/scs