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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5231/2013

ANKUR KHANNA ..... Petitioner

Through: Mr Ramesh Gopi Nathan, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ORS ..... Respondents

Through: Ms Isha Khanna, Advocate for Mr Nidhi Raman, Advocate for R-1, 2 & 3.
Mr Ram Narresh, LDC, Revenue Deptt. (HQ.).

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 07.11.2017

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "(a) issue direction by way of writ of mandamus or by way of any other writ, to the Respondents to give reasons for not giving the Money Lending license in Delhi, and/or,
>
> (b) give directions to the Respondents for starting to give the money lending license under the Punjab Registration of Money Lenders Rules, 1939."

2. The provisions of the Punjab Registration of Money-Lender's Act, 1938 (hereafter 'the Act') was extended to Delhi by a notification dated 11.09.1940.

3. The petitioner, being desirous of carrying on the business of money

lending, applied for a licence under the Act. The said application was filed on 07.03.2011 with the office of the Deputy Commissioner (East), Shastri Nagar. Admittedly, the petitioner's request for a licence has not been processed. On 30.11.2012, the petitioner was informed by the office of the Divisional Commissioner, Revenue Department, Co-ordination Branch that the scheme for issue of Money Lender License has been kept in abeyance since 24.04.2007.

4. Section 2(9) of the Act defines the term "Money Lender" as under:

> "Money Lender means a person, or a firm carrying on the business of advancing loans as defined in the Act, and shall include the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise, of such person or firm; provided that nothing in this definition shall apply to-
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> a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased moneylender together with all his rights and liabilities;
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> provided that such person only-
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> (i) winds up the estate of such money-lender;
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> (ii) realises outstanding loans;
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> (iii) does not renew any existing loan, nor advance any fresh loan
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> b) a bona fide assignment by a money-lender of a single loan to any one other than the wife or husband of such assignor, as the case may be, or by any person, who is descended from a common grandfather of the assignor."

5. Section 3 of the Act expressly provides that any suit instituted by a Money Lender for the recovery of a loan would be dismissed unless the Money Lender is registered and holds a valid licence in such form and in

such manner as may be prescribed. Section 3 of the Act is set out below:-

> "3. **Suits and applications by money-lenders barred, unless money-lender is registered and licensed.**
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> 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 a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-
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> (a) at the time of the institution of the suit or presentation of the application for execution; or
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> (b) at the time of decreeing the suit or deciding the application for execution –
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> (i) is registered; and
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> (ii) holds a valid licence, in such form and manner as may be prescribed; or
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> (iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application or execution is presented; or
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> (iv) if he is not a registered and licensed 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 license pending before the Collector is finally disposed of."

6. Section 5 of the Act provides for issuance of license to money lenders, which reads as under:-

"5. **Licensing of Money-lenders**

> 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."

7. Ms Khanna, learned counsel appearing for the respondent referred to the counter affidavit filed on behalf of the respondents and submitted that although the said Act is applicable, it has lost its efficacy. She contended that there is no mechanism for regulating the business of money lenders and there is no penalty, which is prescribed under the Act for violation of its provisions. Ms Khanna further submitted that vide notification dated 22.01.2014, a Committee had been constituted to examine the efficacy of the existing money lenders legislation in Delhi and to make the necessary recommendation to either amend the Act or to legislate afresh.

8. Plainly, the aforesaid state of affairs cannot be permitted to continue indefinitely. The contention that there is no penalty prescribed under the Act for its violation is of little relevance. The Act specifically provides that the suit filed by a money lender is to be dismissed. Admittedly, the said Act is applicable. In the circumstances, not issuing a license under the said Act, effectively, places a complete embargo on a money lender to file any suit for recovery of the money lent. The petitioner cannot be visited with rigors of the Act at the same time be deprived of the recourse for avoiding the same by obtaining a licence under the Act.

9. It is also relevant to note that the language of Section 5 of the Act makes it amply clear that on an application, the Collector is required to issue a license for such period, in such form and on such conditions as may be

prescribed. The use of the word *shall* clearly indicates that it is mandatory for the Collector to perform the duty that he is charged with.

10. Although, a Committee has been constituted to take a comprehensive view regarding the efficacy of the Act, there is no notification suspending the applicability of the said Act. Since there is no dispute that the Act is at present applicable to NCT of Delhi, the concerned Collector is required to issue a licence as mandated under the Act.

11. In the circumstances, the present petition is disposed of by permitting the petitioner to make a fresh application to the Collector. The Collector shall consider the petitioner's application and issue a license in accordance with the Act and the Rules, made there under.

12. It is clarified that any such license issued under the Act, would not entitle the petitioner to carry on the business of money lending in contravention of any other applicable law(s).

13. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

NOVEMBER 07, 2017
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