Gajnan and Others

Vs

Seth Brindaban

Civil Appeal No. 1982 of 1966

(J. M. Shelat, I. D. Dua JJ)

20.07.1970

JUDGMENT

DUA, J. -

1. This is an appeal with certificate under Article 133(1)(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 1,07,269/2/- with future interest. The suit was contended 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 moneylender within the meaning of C.P. Moneylenders' Act (XIII of 1934) and no certificate under Section 11-F 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 Diwalia notices to the defendant in respect of this debt and this omission disentitled him to claim interest.

2. Seven additional issued were framed on the amended pleas. They are mainly concerned with the provisions of the Moneylenders' 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. and 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. and Berar Moneylenders' Act. The plaintiff was found to have contravened Sections 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 violation of the C.P. Act.

3. 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 ?
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> (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 ?
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> (3) Could a personal decree for payment of money be passed against Defendants 2 and 3 ?
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> (4) (a) 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 ?
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> (b) Was the appellant liable to maintain accounts as provided by Section 3(a) of the Moneylenders Act ?
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> (5) Are the three instruments validly registered or is the registration void ?
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> (6) Are the findings on issued 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 issued in the previous litigation finally decided between the parties ?
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> (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 ?"

4. 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 Section 11-H of the C.P. and 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 disagreed 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 moneylending business in Chanda District after 1950 or 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 the 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. and Berar Moneylenders' Act.

5. 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 1930) but it embodied, in addition, the principle of Damdupat 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 clause (v) of Section 2 means a person who in the regular course of business advances a loan as defined in this Act and it includes his legal representative and successors in interest. "Loan" as defined in clause (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. and Berar Act XIV of 1940 and Sections 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 Section 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 11-F debars 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 Section 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 a certificate by reason of the fact that he does not carry on the business of moneylending 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 moneylending is void and, therefore, unenforceable in courts of law.

6. On behalf of the appellants strong reliance was placed on the decision of the House of Lords in Cornelius v. Philips. (1918 AC 199) In that case, distinguishing and explaining an earlier decision of the House of Lords in Whiteman v. Sadler (1910 AC 514) Section 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 Section 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 (1953 NLJ 517, 532) but was not accepted. The case of Cornelius v. Philips (supra) was distinguished and it was observed :

> "The learned counsel for the applicant then relied on the house of Lords decisions in Cornelius v. Philips (supra) 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 but 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 transaction. 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 held 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 (AIR 1932 PC 207, 211) :
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> "It is they think, always dangerous to apply English decisions to the construction of an Indian Act."

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 Section 11-B 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 not 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 11-F of the Act for carrying on the business without a valid registration certificate. We may cite Shanshir Ali v. Ratnaji (AIR 1952 Hyd 58 (FB)) in support."

7. The appellant's counsel also tried to distinguish the Full Bench decision of the Nagpur Bench in Hajarimal v. Hari Narayan ((1965) 67 Bom LR 316) (which overruled Wasudeo Bhairulal v. Ramchandra ((1958) 60 Bom LR 1247)) by submitting that the Full Bench had left open the question of the transaction entered into by a moneylender in contravention of Section 11-F 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 Section 65 of the Contract Act."

8. Earlier in the course of judgment the learned Chief Justice specking for the Full Bench had also observed :

> "The principal reason for the contrary view taken in Wasudeo Bhairulal v. Ramchandra (supra) is that as Section 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 Legislature has also in sub-section (2) of section 11-F specified the penalty for contravention of the provisions of sub-section (1) of section 11-F, that is, for carrying on moneylending business without a certificate. It has not prescribed any additional penalty such as that a suit to recover a loan advanced by an unregistered moneylender shall not lie or shall be dismissed. It is not open to a Court to subject a person to any penalty other than what the legislature has prescribed."

9. The decision of the Full Bench of the Madhya Pradesh High Court in Janki Bai v. Ratan Melu (AIR 1962 MP 117 (FB)) was also referred to with approval. In Janki Bai's case (supra) also the decision of the House of Lords in Cornelius v. Philips (supra) was distinguished and it was expressly observed that it would be unsafe to call in aid the decision relating to the interpretation of Section 2 of the English Act for construing Section 11-F the C.P. Act. In regard to the true meaning of Section 11-F the Full Bench, after an elaborate discussion summed up its view thus :

> "The consideration having a bearing on the construction of Section 11-F of the Act

> may now be summed up. 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, Section 11-H of the Act envisages that a loan advanced by an unregistered moneylender can be recovered by him if he subsequently obtains a registration certificate which is in force at the time of the suit.
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> 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 Section 11-F."

Section 11-F was also held in this decision not to bar individual advances.

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

11. In considering this question we must keep in view the warning given by the Privy Council in Isadas (supra) 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 (supra) in 1917 was amended in 1927 when Sections 2 and 3 - interpreted in Cornelius (supra) - 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 Damdupat and extended power of courts to fix instalments for execution of decrees. We are also include to think, in agreement with the decisions of the Nagpur High Court in Pati Ram (supra) and Hajarimal (supra) and of the Madhya Pradesh High Court in Janki Bai (supra), that the provisions of the English Act construed in Cornelius (supra) 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 offer 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 moneylending which is the subject-matter of the suit out of which this appeal arises is void and, therefore, un-enforceable 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 know 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".

12. "Moneylender" as defined in Section 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 Section 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 Section 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 on such business. The application is required inter alia to specify the district or districts in which the applicant carries on or intends to carry on business of moneylending. Section 11-B provides that the registration certificate granted under Section 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 Section 11-F (i). According to Section 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 moneylenders in which the expression "moneylender" has been so construed as to exclude isolated transaction or transactions of moneylending. Vivion Bose, J., while dealing with the Act, which concerns us, in Sitaram Sharwan v. Bajya Parnay, (AIR 1941 Nag 177) 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."

13. This decision was followed by T. C. Shrivastava, J., of the Madhya Pradesh High Court in Hari Prasad v. Sobhanlal (MFA 124 of 1956, decided on December 18, 1957-1956 MPLJ Note No. 11) and by Shiv Dayals, J., of the same High Court in Gurmukh Rai v. Hari Har Singh (S.A. No. 39/1961, dt. 26-3-1964 - MPLJ Note 102). The same view was taken by K. L. Pandey, J., of the same High Court in Chaith Ram v. Baparimal (CR 374/1959, dt. 1-7-1960 - 1960 MPLJ Note 198) In this case both Section 2(v) and Section 11-H of the Act came up for construction. In Sitaram Sharwan (supra) it was also held that the person seeking advantage of the Moneylenders' Act has to prove that the plaintiff a moneylender. To the same effect is the decision by T. C. Shrivastava, J., in Kishanlal v. Laxmibai. (CRP 109/1962, dt. 20-7-1962 - 1963 MPLJ 119)

14. 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 validate 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

moneylender 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 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 moneylending. The statutory scheme thus clearly seems to indicate that it is only the business of moneylending which is sought to be controlled and individual transaction 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 (supra) and Hajarimal (supra) and Janaki Bai (supra) is in conformity with the statutory intendment and is, therefore, correct.

15. 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.

16. In the case before us the construction placed by the Nagpur and Madhya Pradesh High Court on the relevant provisions of the C.P. Act seems to have been accepted all these years beginning with Sita Ram Sharwan (supra) 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 (supra) of course, dissented in 1958 from the view of the Division Bench of the Nagpur High Court in Pati Ram (supra) 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 (supra), vide Janaki Bai (supra). It, therefore, seems obvious that titles and transactions must have been counted on the view of law which, by and large, stood almost uniformly as enunciated in Sitaram Sharwan (supra) in 1941 and later in Pati Ram (supra) 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 Section 11-F(i) of the Act is made a penal offence is an additional factor against the property of over-ruling and upsetting the established view unless we feel convicted that the established view clearly erroneous. As already discussed, we are not so convinced but are on the other hand inclined to agree with established view.

17. There is still another circumstances which may appropriately be noticed. Sections 11-C, 11-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 Section 11-F and other provisions of the Act been considered by the Legislature to be contrary to the legislative intendment, one would have ordinarily expected an amendment clarifying its intention because the Legislature must be fixed with the knowledge of construction placed on the Act by the courts. No such action was taken by the Legislature. This circumstances 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.

18. On the view we have taken the only question which remained 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.

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