

Associated Timber Industries & Ors.

Vs

Central Bank of India and Another

Civil Appeal No. 4446 of 2000

(Mr. D.P. Mohapatra and Mr. Shivraj V. Patil, JJ.)

09.08.2000

JUDGMENT

D.P. Mohapatra, J.:— Leave granted.

The question that arises for determination in this case is whether the Central Bank of India is a 'money-lender' under the Assam Money Lenders Act, 1934 (Assam Act IV of 1934) (hereinafter referred to as "the Assam Act") and therefore is required to take a licence under the said Act to carry on its activities? The question having been answered in the negative by a Division Bench of the Gauhati High Court, the defendants have filed this appeal assailing the judgment.

The factual backdrop of the case relevant for determination of the question may be stated thus:

The Central Bank of India, respondent herein, filed the suit for realisation of certain amount from the Associated Timber Industries, Chabua and others, appellants herein, being the amount due to the Bank towards sums advanced to the defendants. The defendants raised an objection against maintainability of the suit on the ground of non-compliance with the provisions of the Assam Act, particularly Section 7-D. To be more specific the objection was that the Bank being a 'money-lender' has not been registered under the Assam Act; in the absence of a registration certificate, the suit is not maintainable and therefore, cannot be proceeded with.

The Additional District Judge, Dibrugarh, framed an issue - whether the suit is maintainable? The said issue was taken up as a preliminary issue. By the order dated 26th June, 1989 the learned trial judge dismissed the suit as not maintainable. The plaintiff challenged the judgment of the trial court before the High Court in First Appeal No. 78 of 1989, wherein a Division Bench by the judgment dated 29th July, 1998 set aside the judgment of the trial court and directed disposal of the suit on merits in accordance with law. The said judgment is under challenge in this appeal.

Shri Bhaskar P. Gupta, learned senior counsel appearing for the appellants, strenuously urged that the High Court is not right in holding that the provisions of the Assam Act are not applicable to the respondent-Bank. Elucidating his contention, Shri Gupta submitted that advancement of loan by the respondent-Bank to the appellants makes the transaction between the parties a 'loan' as defined in Section 2(3) of the Assam Act and the Bank a 'money lender' as defined in Section 2(1) of the Assam Act. It was the further submission of Shri Gupta that in the absence of a notification by the State Government declaring the respondent to be a notified Bank for the purpose of the Assam Act, the exclusionary provision in Section 2(3) is not attracted. The resultant position, contended Shri Gupta, is that in the absence of a registration certificate the suit filed by the respondent-Bank is not maintainable and the trial court rightly held so; the High Court fell into error in holding in favour of

maintainability of the suit.

Shri R.N. Trivedi, learned Additional Solicitor General, supporting the impugned judgment contended that the respondent is engaged in 'banking activity', which is different from mere money lending activity, and therefore, the provisions of the Assam Act are not applicable in case of a Bank, like the respondent. The activities of banks are governed under the Banking Regulation Act, 1949 which is a Parliamentary enactment. The banks registered under the said Act are under the regulatory control and supervision of the Reserve Bank of India. Shri Trivedi further contended that lending money to customers is not the only activity of the respondent; it is one of multifarious activities undertaken by it. According to Shri Trivedi the expression 'money-lender' as defined in Section 2(1) of the Act should be so interpreted as to include a person whose sole activity is lending money to others charging interest; considered on that basis the respondent does not come within the scope of the definition of the term 'money-lender', which is the sine qua non for application of the statute. Since the Assam Act has no application to the respondent the question of getting itself registered under the said Act does not arise. It was the further contention of Shri Trivedi that accepting the contentions raised by the appellants will lead to serious consequences inasmuch as the entire lending activity carried on by the respondent will be taken as illegal and the sums advanced will not be realisable. Such a drastic consequence should be avoided by reading down the provision in Section 2(1) to mean that a 'money-lender' means 'a person who solely carries on the business of advancing money on condition of repayment with interest'.

On the case of the parties and the contentions raised by the learned counsel appearing for them, the point formulated earlier arises for determination.

In P. Ramanatha Aiyer's Law Lexicon the term "Banking business" is stated to be the business of banking, as defined by law and custom, consists in the issue of notes intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange, negotiating loans, and dealing in negotiable securities issued by the Government, State and national municipal and other corporations.

We shall next consider some relevant provisions of the Statutes which control and regulate the activities of banks and those of money-lenders.

The Banking Regulation Act, 1949 has been enacted by the Parliament to consolidate and amend the law relating to banking. In section 2 of the said Act it is declared that the provisions of the Act shall be in addition to, and not, save as expressly provided, in derogation of the Companies Act, 1956 and any other law for the time being in force.

Under section 3

- (a) a primary agricultural credit society;
- (b) a co-operative land mortgage bank; and
- (c) any other co-operative society, except in the manner and to the extent specified in Part V.

are excluded from the purview of the Act.

Section 5 of the Act which is the interpretation provision, provides in clause (b) that 'banking'

means the accepting, for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise.

Under clause (c) of section 5 'banking company' means any company which transacts the business of banking in India. In the explanation to the clause it is provided that any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause.

The provisions clearly indicate the broad spectrum of activities to be undertaken by a Bank like borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling collecting and dealing in bills of exchange, hundees, promissory notes, coupons, drafts, bills of lading, railway receipts, etc. negotiating loans and advances; the receiving of all kinds of bonds, scrips or valables on deposits or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities.

Section 6 deals with the forms of business in which banking companies may engage. Under sub-sections 1(a) to (o) of the said section are enumerated different forms of business in any one or more of which a banking company may be engaged. In section 6(1)(n) it is provided that a banking company may be engaged in doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company. In clause (o) it is laid down that the banking company may engage in any other form of business which the Central Government may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

In Section (2) of section 6 it is expressly provided that no banking company shall engage in any form of business other than those referred to in sub-section (1).

Under section 21 of the Act control over advances by banking companies is vested in the Reserve Bank of India. In sub-section (1) thereof it is laid down that where the Reserve Bank is satisfied that it is necessary or expedient in public interest or in the interest of the depositors or banking policy, so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

In sub-section (2) of section 21 provision is made that without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) enabling the Reserve Bank to give directions to banking companies regarding certain particular matters like (a) the purpose for which advance may or may not be made (b) the margins to be maintained in respect of secured advances, .. (e) the rate of interest and other terms and conditions on which advances or other financial accommodation shall be bound to comply with any directions given to it under this section.

Section 21-A is a provision ousting the jurisdiction of Courts from re-opening any transaction between the banking company and its debtor on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive. In section 22 are contained the provisions for licensing of banking companies.

Under the provisions in Sections 26 and 27 every banking company is required to submit in return in the prescribed form to the Reserve Bank.

Under section 47-A power is vested in the Reserve Bank to impose penalty on a banking company in case of contravention or default of the nature referred to in sub-section (3) or sub-section (4) of section 46.

Coming to the Assam Money-lenders Act, 1934, in the preamble of the Act it is stated "whereas it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money lenders in Assam; And whereas the previous sanction of the Governor General has been obtained under sub-3. (3) of s.80-A of the Government of India Act. It is hereby enacted as follows..."

In section 2(1) of the Act 'Money-lender' is defined to mean a person who in the regular course of business advances a loan as defined in this Act and shall include, subject to the provisions of s.6, the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan and money-lending shall be construed accordingly.

(Emphasis supplied)

In sub-section (3) 'loan' an advance, whether of money or in kind, made on condition of repayment with interest and includes any bond bearing interest executed in respect of past liabilities and any transaction which is in substance a loan, but does not include -

(a) a loan to or by, or a deposit with, any society or association registered under the Societies Registration Act, 1960 or under any other law relating to public religious or charitable objects;

(b) a loan advanced before or after the commencement of this Act -

by a Bank which has been declared to be a notified Bank under S.2-A whether or not such bank was declared to be a Bank at the time the loan was advanced.

a loan advanced by Life Insurance Corporation of India, Financial Corporation of India or any other corporate body.

Section 2-A provides that the State Government may, by notification in the official Gazette, declare any bank to be a notified bank for the purpose of this Act.

Under section 4 any contract made before or after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract.

Section 6 provides that every money lender shall regularly maintain an account for each borrower separately of all transaction with dates and places of such transaction in respect of any loan advanced to that borrower and furnish such borrower every year with an eligible statement of accounts in the prescribed manner signed by the money-lender or his authorised agent.

In section 6-A provision is made that every money-lender, who received repayment, from his borrower on account of any loan advanced to him or payment of any interest therein shall forthwith

give a receipt therefor,

In section 7-B it is laid down that every person who carries on or intends to carry on the business of money-lending shall get himself registered by an application made to the Registrar in prescribed form and prescribed fees and, for such registration, the Registrar shall grant a registration certificate to him in such form as may be prescribed.

In Section 7-C it is provided that no person shall carry on the business of money-lending unless he holds a valid registration certificate in this behalf.

Under sub-section (2) contravention of the provisions of sub-section (1) is made punishable with simple imprisonment and fine.

Section 7-D on the basis of which the defendant raised the objection regarding maintainability of the suit reads:

"7-D Suits to proceed without registration certificate, etc. No suit for the recovery of a loan advanced by a money-lender shall 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 a registration certificate by reason of the fact that he does not carry on the business of money-lending".

From the provisions in the two enactments, one Central and the other State, bring forth the wide difference in the fields of operation of banks and activities of money-lenders. While 'banks' are financial institutions which are engaged in improving the flow of trade, movement of commerce and expansion of business and thereby improving the socio-economic condition of the people; 'money-lenders' are engaged in making personal profits; while the former are guided by policies and decisions of the Central Government and the wide spectrum of activities in which they are engaged are all controlled or regulated by the Reserve Bank of India; there is no such regulatory policy in the case of the latter.

In the case of *M/s. Fatehchand Himmatlal vs. State of Maharashtra* [(1977) 2 SCC 670] the Constitution Bench of this Court considering the constitutional validity of the Maharashtra Debt Relief Act, 1976 observed:

"A meaningful, yet minimal, analysis of the Debt Act, read in the light of the times and circumstances which compelled its enactment, will bring out the humane setting of the statute. The bulk of the beneficiaries are rural indigents and the rest urban workers. These are weaker sections for whom constitutional concern is shown because institutional credit instrumentalities have ignored them. Money-lending may be ancillary to commercial activity and benignant in its effects, but money-lending may also be ghastly when it facilitates no flow of trade, no movement of commerce, no promotion of intercourse, no servicing of business, but merely stagnates rural economy, strangulates the borrowing community and turns malignant in its repercussions. The former may surely be trade but the latter-the law may well say - is not trade. In this view, we are more inclined to the view that this narrow, deleterious pattern of money-lending cannot be classed as 'trade'. No other question then arises, since the petitioners and appellants cannot summon Articles 301 to their services".

The Division Bench of the Calcutta High Court in *Mahaluxmi Bank Ltd. vs. Registrar of Companies, West Bengal* [AIR 1961 Cal 666] construing the the definition of the word "Banking" in Section 5(1)(b) of the Banking Companies Act, 1949 observed inter alia (at p.669):

"Now this definition makes it clear that receiving money on deposit from customers and honouring their cheques is the essential characteristic of banking. The money deposited by the customers can be utilised by the banker for lending it or for investing it but the bank also undertakes the obligation to repay the deposit on demand or otherwise and the mode by which the withdrawal of the deposit can be effected is by the issue of cheques, drafts, orders or otherwise, that is, by like methods.

In Hart's Law of Banking, a banker or bank is defined as one who, in the ordinary course of his business, receives money which he pays by honouring the cheques of persons from or on whose account he receives it. Sir John Paget in his book on Banking has pointed out that "no person or body corporate or, otherwise can be a banker who does not (1) take deposit accounts, (2) take current accounts, (3) issue and pay cheques, and (4) collect cheques crossed and uncrossed for his customers". Sheldon in his book on the Practice and Law of Banking, seventh edition at page 183, formulates, the following definition of a banker.

"A person cannot claim to be carrying on the business of banking unless he receives money or instruments representing money on current account, honours cheques drawn which his customers place into his hands for collection".

In the case of *Re Bottomgate Industrial Co-operative Society* (1891) 65 LT 712 at p.714 Smith, J. defines the business of bankers thus:

"The principal part of the business of a banker is receiving money on deposit, allowing the same to be drawn against as and when the depositor desires and paying interest on the amounts standing on deposit".

Then Sec 6(1) of the Banking Companies Act, 1949, provides, that in addition to the business of banking, a banking company may engage in any one or more of the different kinds of business specified in the various sub-clauses of sub-sec. (1) of Sec.6. This indicates that the main or real business of a banking company is as stated in Sec. 5(1) of the Act but banking companies usually carry on and are permitted to carry on other kinds of business which are auxiliary or incidental to the main business. Sub section (2) of Sec. 6 lays down that no banking company shall engage in any form of business other than those referred to in sub-section (1). So the banking company is expressly prohibited from carrying on any kind of incidental or allied business other than those enumerated in sub-clause (a) to (o) of sub-section (1) of Sec. 6 of the Act. Thus it is abundantly clear that the essence of banking is the relationship which is brought into existence at the time of the deposit; that is the core of banking. It is true that the business of banking. It is true that the business of banking covers every possible phase or combination of deposit, custody, investment, loan, exchange, issue and transmission of money, creation and transfer of credit and other kindred activities but if the essential characteristic of banking namely the power to receive deposits from the public which are repayable in the manner indicated in Sec. 5(1)(b) of the Banking Companies Act is absent and merely the power of granting loans is retained and exercised that, in my view does not make the company a banking company. Lending of money may be one phase of banking business but it is not the main phase or the distinguishing phase".

In the case of *Reserve Bank of India vs. Peerless General Finance and investment Co. Ltd. and others* (1987) 1 SCC 424) a Bench of learned two Judges of this Court considered the validity of the provisions of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 made the following observations regarding interpretation of inclusive definition in statute.

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know when it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of statute and no words of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in Srinivasa (1981 (1) SCR 801) and we find no reason to depart from the court's construction."2

Here we may also take note of the definition of the expression 'money-lenders' in some other State Money-Lenders Acts.

In Bombay Money-Lenders Act, 1946 Section 2 clause (10) provides that money-lender means (I) an individual, or (ii) an undivided Hindu family; or (iii) a company or (iv) an unincorporated body of individuals, who or which (a) carries on the business of money-lending in the State or (b) has his or its principal place of such business in the State and includes a pawn-broker but does not include - (I) Government (ii) a local authority (iii) a bank (iv) the Agricultural Refinance Corporation Act, 1963; or (v) any other banking financial or any institution which the State Government may, by notification in the Official Gazette, specify in this behalf.

The expression 'business of money-lending' is defined in section (2) to mean the business of advancing loans whether in cash or kind and whether or not in connection with or in addition to any other business.

In Tamil Nadu Money-Lenders Act, 1957 the expression 'money lender' is defined in s.2(8) to mean a person whose main or subsidiary occupation is the business of advancing and realizing loans, but excludes a bank or a co-operative society. The explanation to the said section lays down that where a person who carries on in the (State of Tamil Nadu) the business of advancing and realizing loans is resident outside the State of Tamil Nadu, the agent of such person resident in the State of Tamil Nadu shall be deemed to be the money-lender in respect of that business for the purpose of the Act.

In the Bengal Money-Lenders Act, 1940 it is provided that loan means an advance whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include... (d) a loan advanced before or after the commencement of this Act (I) by a bank; or (ii) by a co-operative life insurance society, co-operative society, insurance company, life assurance company (Life Insurance Corporation of India) mutual insurance company, provident insurance society or provident society or from a provident fund. The term 'money-lender' is defined in section 2(13) of that Act to mean a person who carries on the business of money-lending in West Bengal or who has a place of such business in West Bengal and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872.

From the provisions in the other State enactments also it is clear that the legislatures have taken

caution to exclude banks from the operations of the statutes presumably with a view to avoid any conflict with the Parliamentary enactment. Unfortunately, the Assam Money-Lenders Act, 1934 does not incorporate any such provision in it. It may be noted here that 'banking' is covered under item no. 45 in List-I of the Union List of the VII Schedule of the Constitution, while 'Money-lending' and 'Money-Lenders' : Relief of Agricultural indebtedness comes under Item 30 of List II - State List of the VIIth Schedule.

Adopting a purposive and meaningful interpretation of the provisions of the statute we are persuaded to take the view that 'banks' do not come under the purview of the Assam Money-Lenders Act. Therefore the High Court was right in holding that the suit filed by the respondent-bank is maintainable. Accordingly, the appeal is dismissed with costs.