

# MADHYA PRADESH HIGH COURT

Smt. Janki Bai Chunnilal

Vs.

Ratan Melu

(P.V. Dixit, C.J., K.L. Pandey and S.P. Bhargava, JJ.)

Civil Revn. No. 264 of 1960, Decided on 28.9.1961, from order of A.D.J., Balaghat,  
22.4.1960. D/d. 28.9.1961

## JUDGMENT

(OPINION OF THE FULL BENCH)

**Pandey, J.**

On a reference made by Tare, J., the question referred to the Full Bench is :

"Whether the suit of a plaintiff money lender is liable to be dismissed if he does not hold a registration certificate relating to the period when the money lending transactions were entered into or whether it is sufficient if the plaintiff-money lender produces during the pendency of the suit a registration certificate relating to a period subsequent to the money-lending transactions."

2. The facts of the case are simple and may be stated, in a few words. On the foot of a promissory note dated 19 March 1956, the applicant, who is a moneylender, advanced to the non-applicants a loan of Rs. 850. When the applicant subsequently filed a suit to recover the amount with interest from the non-applicants they resisted it. The Small Cause Court dismissed the suit on two grounds. The applicant did not produce her certificate of registration required to be taken under section 11-B of the Central Provinces and Berar Moneylenders Act, 1934 (hereinafter called the Act). She did not prove that the non-applicants executed the promissory note or that there was any consideration for it. Thereupon, the applicant filed a revision and subsequently produced her registration certificate, which she had applied for and obtained during the pendency of the suit, with an application for receiving the certificate as additional evidence under Order 41 Rule 27 Civil Procedure Code.

On the evidence led in the case, Tare J., who heard the revision, took the view that the

execution of the promissory note and the consideration paid therefor were duly established. He was also inclined to admit the registration certificate as additional evidence. But he felt that the question involved should be referred to a larger Bench for reasons which may be given in his own words :

"The case of *Shamshir Ali v. Ratanji*,<sup>1</sup> relied on by a Division Bench of this Court in *Patiram v. Baliram*,<sup>2</sup> was subsequently overruled by another Full Bench of the Hyderabad High Court consisting of 5 Judges in *Mahomed Salem v. Umaji*,<sup>3</sup> A Division Bench of the Nagpur Bench of the Bombay High Court consisting of Mudholkar T. (as he then was) and Datar J. in *Wasudeo Bhairulal v. Ramchandrarao*, 1958 Nag LJ 294, expressed the opinion that the Division Bench view of the Nagpur High Court did not correctly represent the legal position in view of the fact that the former Full Bench view of the Hyderabad High Court had been overruled by the later Full Bench of the same High Court. As such, the Division Bench of the Bombay High Court cast a doubt on the correctness of the Division Bench view of the Nagpur High Court, although the reasons for the decision were based on the earlier view involving particular provisions of the Bombay Act. On account of this fact, I feel it necessary that this High Court should express its opinion in view of the fact that the very basis of the earlier view of a Division Bench of the Nagpur High Court disappeared on account of the later Full Bench view of the Hyderabad High Court, and particularly when a doubt is cast on the correctness of the decision of this Court by a Division Bench of the Bombay High Court with reference to section 11-H of the C.P. Moneylenders Act, 1934."

3. It would appear from the order of reference that this Court considered the question now before us in several cases. The *cursus curiae* of the Court is expressed in ILR (1953) Nag 997: AIR 1954 Nagpur 44, in the following 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 obtain 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." (Page 1008 of ILR Nag) : (p.48 of AIR)

Both before and after Patiram's case, ILR (1953) Nag 997 : AIR 1954 Nagpur 44, the same view has been consistently taken by this Court by Bose J. (as he then was) in *Laxman v. Yogaji*,<sup>4</sup> by Hidayatullah J. (as he then was) in *Sukbdas v. Pundalik*,<sup>5</sup> /, by V.R. Sen, J. in *Nilkanth Naik v. Sonya*,<sup>6</sup> by Sinha C.J. (as he then was) in *Ganulal v. Mahadeo*,<sup>7</sup> by R.K. Rao J. in *Vishwanathrao v. Mahadeo*<sup>8</sup> by Naik J. in *Hiralal v. Sudarshan*,<sup>9</sup> (MP), and by T.C. Shrivastava J. in *Lallooram v. Rameshwarprasad*,<sup>10</sup> I should hesitate to depart from the view taken in these decisions which is not manifestly erroneous or mischievous and which has stood for many years because, from its very nature, it may be supposed to have affected the conduct of numerous persons in matters relating to their property. Again, these decisions proceed upon the basis that a loan advanced by an unregistered moneylender, which is not expressly prohibited or declared to be void by section 11-F of the Act, ought not to be nullified. This is in accord with the principle indicated by Lord Wright in *Vita Food Products Incorporated v. Unus Shipping Co.*,<sup>12</sup>

"Nor must it be forgotten that the rule by which contracts not expressly forbidden by statute or declared to be void are in proper cases nullified for disobedience to a statute is a rule of public policy only, and public policy understood in a wider sense may at times be better served by refusing to nullify a bargain save on serious and sufficient grounds."

That the view hitherto taken by this Court is supportable on the principle of stare decisis and the rule of public policy indicated by Lord Wright is obvious. However, I would not rest my opinion only on these principles.

4. For a fuller consideration of the question referred to us, it is necessary to recall the relevant provisions of the Act. According to section 2(v), 'moneylender' means a person who, in the regular course of business, advances a loan as defined in the Act and includes, subject to section 3, his legal representatives and successors in interest. Section 3 obliges every money-lender to (a) regularly maintain for each debtor a

separate account of all transactions in respect of any loan advanced to him and (b) furnish to him annual statements of accounts in the manner therein provided. Under Section 7, the Court trying any suit or proceeding relating to a loan is required, before considering the claim on merits, to frame and decide the issue whether the moneylender has complied with the aforesaid two provisions of section 3. If it is found that a separate account as enjoined was not maintained, the Court has to disallow the whole or such portion of interest found due as may, in the circumstances, appear reasonable and it may also disallow the costs. If the annual statement of accounts is found not to have been duly furnished, then, in computing the amount of interest to be allowed, every period for which the said statement was not so furnished must be excluded. In the Act as originally passed for making "better provisions for the regulation and control of the transactions of moneylending" there was no provision for registering money-lenders. The Amendment Act XIII of 1936, which remained in force for four years, provided for the first time for registration of money-lenders and matters incidental thereto. Thereafter, by the Central Provinces Money-lenders (Amendment) Act, 1940 (XIV of 1940), Sections 11-A to 11-J were inserted, by Section 11-B, every person, who carries on or intends to carry on the business of moneylending, is required to register himself in every district in which he carries on, or intends to carry on, the business.. It is implicit in this provision that any one may apply for so doing and, on his paying the prescribed fee, the Sub-Registrar shall grant to him a registration certificate, which, under Section 11-C will now be valid, when so granted, "for a period of one year or two years". Section 11-D provides that the registration certificate granted for one district does not entitle the holder thereof to carry on the business of moneylending in any other district. Sections 11-F, 11-G and 11-H, which in the sequel will be examined more fully, enact as follows :

"11-F. (1) No person shall carry on the business of moneylending in any district unless he holds a valid registration certificate in respect of that district.

(2) Whoever contravenes the provisions of subsection (1) shall be punished with fine which may extend to one hundred rupees, or, if he has previously been convicted of an offence under that subsection, with fine which may, extend to two hundred rupees.

11-G. (1) The Collector may accept from any person who has committed an offence against subsection (1) of Section 11-F a sum of money not exceeding two hundred rupees by way of composition of such offence.

(2) On payment of such sum of money, no further proceedings shall be taken against such person in respect of such offence, and if in custody he shall be discharged.

11-H. No suit for the recovery of a loan advanced by a moneylender 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 moneylending in any of the districts of Madhya Pradesh :

Provided that this section shall not apply to a suit instituted before the 1st October 1940."

5. It is urged that since section 11-F of the Act prohibits every person, who does not hold a valid registration certificate for a district, to carry on in that district the business of money lending and imposes upon him a penalty for infraction of that statutory interdiction, every advance of a loan contrary to it must itself be regarded as prohibited by necessary implication. In my opinion, the argument, which suffers from over-simplification, cannot be accepted without important qualifications.

6. In *Johnson v. Hudson*<sup>12</sup> where the plaintiff made a contract of sale of tobacco without entering himself in the Excise Office as dealer in tobacco and without obtaining any licence for the purpose, it was held that the contract of sale was not illegal and that "at the most it was the breach of a mere Revenue regulation, which was protected by a specific penalty" In *Cope v. Rowlands*<sup>13</sup> Parke B. accepted the principle laid down in (1809) 11 East 180 (supra) as correct. In Cape's case, (1836) 2 M and W 149 the plaintiff brought an action for work and labour done by him as a broker and the plea was that he was not duly licensed to act as a stock broker pursuant to the statute which imposed a penalty on any unlicensed person acting as a broker. Parke B. observed :-

"It is perfectly settled, that where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or statute law, no court will lend its assistance to give it effect. It is equally clear that a contract is void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition..... and it may be safely laid down, notwithstanding some dicta apparently to the contrary,

that if the contract be rendered illegal, it can make no difference, in point of law, whether the statute which makes it so has in view the protection of the revenue, or any other object. The sole question is, whether the statute means to prohibit the contract.....".

After examining the provisions of the Act, Parke B. went on to say that the language "shews clearly that the legislature had in view as one object, the benefit and security of the public in those important transactions which are negotiated by brokers. The clause, therefore, which imposes a penalty, must be taken .....to imply a prohibition of all unadmitted persons to act as brokers, and consequently to prohibit, by necessary inference, all contracts which such persons make for compensation to themselves for so acting". *Smith v. Mawhood*,<sup>14</sup> was another case under the Excise License Act (6 Geo. 4, c.81). Affirming the view taken in (1809)11 East 180 (cit. sup) and (1836) 2 M and W 149 (cit. sup.), Parke B observed :

"With respect to the second plea, that is clearly defective for want of an allegation that the sale of this tobacco was a dealing in tobacco, so as to require a license. But, even if it were good on that ground, I think the object of the legislature was not to prohibit a contract of sale by dealers who have not taken out a license pursuant to the Act of Parliament. If it was, they certainly could not recover, although the prohibition were merely for the purpose of revenue. But, looking at the Act of Parliament, I think its object was not to vitiate the contract itself, but only to impose a penalty on the party offending, for the purpose of the revenue. The plaintiffs, therefore, would be entitled to recover upon their contract, according to the principle laid down in *Johnson v. Hudson*".

In *Taylor v. Crowland Gas and Coke Co.*<sup>15</sup> Parke B expressed the distinction between the two classes of cases in clear language :

"The true principle is laid down in (1836) 2 M and W 149 and (1845) 14 M and W 452; and the question in all these cases is, whether, looking at the statute, the object of the Legislature in imposing a penalty was to prohibit the particular act, or whether it was for a different purpose. Therefore, the simple point which we have now to decide is, whether the Legislature intended to prohibit this act being done under a penalty, and thus render it illegal; for if so the plaintiff cannot recover.

Now, looking at the statute, I am of opinion that the object of the Legislature was to confine the practice of drawing the instruments therein specified to a certain class supposed to have a competent knowledge of the subject, and to protect the public against the mistakes of inexperienced persons in matters of this kind; and with that view, the Legislature has prohibited these acts being done except by a particular class of persons. The object of the Legislature could not have been merely to secure to the revenue the duty on certificates because it is only certain persons who can by law obtain such certificates. In that respect, the case is different from *Smith v. Mawhood*, where the object of the Legislature was to compel the obtaining of licenses, which any one might obtain, to deal in a particular commodity".

In *St. John Shipping Corporation v. Joseph Rank Ltd.*,<sup>16</sup> it was contended that the contract in question was impliedly prohibited by a statute. Deolin, J. who dealt with the case, referred to a quotation from (1836) 2 M and W 149 (which I have reproduced earlier), and observed :

"Now this language - and the same sort of language is used in all the cases - shows that the question always is whether the statute meant to prohibit the contract which is sued upon. One of the tests commonly used, and frequently mentioned in the later cases, in order to ascertain the true meaning of the statute is to inquire whether or not the object of the statute was to protect the public or a class of persons, that is, to protect the public from claims for services by unqualified persons or to protect licensed persons from competition."

7. Lord Halsbury has summed up the law in these words :

"Where a penalty is imposed by statute upon any person who does a particular act, this may or may not imply a prohibition of that act. It is a question of construction in each case whether the legislature intended to prohibit the doing of the act altogether, or merely to make the person who did it liable to pay the penalty. If the penalty is recurrent, that is to say, if it is imposed not merely once for all but as often as the act is done, this amounts to a prohibition. Where the object of the legislature in imposing the penalty is merely the protection of the revenue, the statute will not be construed as prohibiting the act in respect of which the penalty is imposed; but where the penalty is imposed with the object of protecting the public, though it may also be for the protection of the revenue,

the act must be taken to be prohibited, and no action can be maintained by the offending party on a contract which is made in contravention of the statute."

(Simond's Edition, Vol.8, Page 141) Anson has thus stated the law :

"But a statute may impose a penalty on the parties to a contract, without declaring it to be illegal or void. The effect in such a case depends upon the proper construction of the particular statute. Where the words of a statute leave room for doubt as to its intention, it is material to ask whether the object of the Act in imposing the penalty is merely to protect the revenue, or whether its object or one of its objects, is to protect the general public or some class of the genera] public by requiring that the contract shall be accompanied by certain formalities or conditions, as, for example, registration in the case of a moneylender. In the latter case it is probable that the act for the doing of which the penalty is imposed is impliedly prohibited by the statute and therefore illegal. It may also be useful to ask whether the penalty is imposed once and for all, or whether it is a recurrent penalty imposed every time the act is done. In the latter case, it is evidently the intention of the statute that the act should be prohibited."

(Principles, of the English Law of Contract, 21st Edition, page 278)

Pollock and Mulla accepted these principles in construing the expression "forbidden by law" occurring in section 23 of the Contract Act. They observed :

"Parties are not, as a rule, so foolish as to commit themselves to agreements to do anything obviously illegal, or at any rate to bring them into Court; so the kind of question which arises in practice under this head is whether an act, or some part of a series of acts, agreed upon between parties, does or does not contravene some legislative enactment or regulation made by lawful authority. The decision may turn on the construction of the agreement itself, or of the terms of the Act or other authoritative document in question, or on both. In particular it may have to be considered whether the intention of the legislator was to prevent certain things from being done, or only to lay down terms and conditions on which they might be done .... Broadly speaking, that which has been forbidden in the public interest cannot be made lawful by paying the penalty for it.....".

(Indian Contract Act, 8th Edition, page 158)

8. In view of the authorities noticed in the last two paragraphs, the position is well settled. When an enactment merely imposes a penalty, without declaring a contract made in contravention of it to be illegal or void, the imposition of the penalty, by itself and without more, does not necessarily imply a prohibition of the contract. In such cases, the Question always is whether the Legislature intended to prohibit the contract. This must be decided upon a construction of the statute. If the object of the enactment, or one of its objects, in imposing the penalty is to protect the general public or any class thereof, it will be construed, in the absence of any other indication of contrary intention expressed in the statute, as implying a prohibition of the contract. On the other hand, if the object of imposing the penalty is merely the protection of the revenue, the contract will not be regarded as prohibited by implication. Although these principles are not in doubt, difficulties sometimes arise in applying them to particular cases.

9. There are numerous examples of revenue statutes having an enactment protected with a specific penalty similar to Section 11-F of the Act. One example is afforded by (1809) 11 East 180 (supra) and (1845) 14 M and W 452 (supra). Another example will be found in Section 8 (1) of the Central Provinces and Berar Sales Tax Act, 1947, which reads as follows :

"No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate".

This enactment is protected by the penalty prescribed by section 24 of that Act. In the context of these provisions, it can hardly be contended that all sales made by unregistered dealers are void. One more example is Section 4 (1) of the Hyderabad Sales of "Motor Spirit Taxation Regulation No. XXIV of 1358 Fasli. which may be reproduced :

"No person shall, after the commencement of this Act, carry on business in motor spirit as an importer or as a wholesale dealer at any place in the State unless he has been registered as such in this State."

The constitutionality of this, enactment was challenged on the ground that it placed an unreasonable restriction on the fundamental right to carry on business under Article 19 (1) (g) of the Constitution. In repelling this contention, the Supreme Court, in *M.A. Rahman v. State of Andhra Pradesh*,<sup>17</sup> observed :

"It follows, therefore that all that any one who wants to carry on business in motor spirit has to do is to ask for registration which he will get under the rules, and the purpose behind registration is that those on whom the liability to pay tax under section 3 of the Act lies are known to the State so that it may realise the tax from them. The challenge therefore to the constitutionality of Section 4 (1) must fail."

These observations are important as indicating the object of making a provision like Section 11-F of the Act in a revenue statute.

10. This brings me to the main question which is whether Section 11-F of the Act providing for compulsory registration of moneylenders with a penalty for its infraction was enacted with the object of protecting the general public or any class thereof. Preambles, which are integral parts of statutes have often been regarded as important guides to construction. If an enactment is not clear, resort may be had to the preamble to explain it. However, in *Powell v. Kempton Park Racecourse Co.*,<sup>18</sup> the Earl of Halsbury explained its limitation in these words :

"Two propositions are quite clear, one that a preamble may afford useful light as to what a statute intends to enact, and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment."

Since the intention of the Legislature in the sense indicated above is not clear from the words employed in Section 11-F, it is permissible to consider the preamble. In the Act as originally passed without any provision relating to registration of money-lenders, the preamble is

"Whereas it is expedient to make better provision for the regulation and control of moneylending;"

The Amending Acts of 1936 and 1940, which introduced the provisions for their registration, have short colourless preambles indicating that it was necessary to amend the Act "in the manner hereinafter appearing" or "for the purposes hereinafter appearing". They throw no light on the scope of the enactments. Further, from the fact that the original preamble has remained unamended, it would perhaps not be right to infer that the amplitude of the Act also remained unaffected. This is because, even where amendments are of a radical character, preambles are now rarely amended. In any event, having regard to the character of the preambles in the two Amending Acts, this is a consideration of doubtful import. It would thus appear that the three preambles are not useful for the construction of the true meaning of Section 11-F.

11. As defined in the Act, a money-lender is a person, who in the regular course of business advances a loan. To be a money-lender, it is not necessary that he should be registered as such under the provisions of the Act. The main provisions of the Act, which afford relief to debtors, are contained in Sections 3 to 11 of the Act, which apply alike to registered and unregistered money-lenders. In other words, a money-lender, who gets himself registered, is not more amenable to these sections nor does his debtor thereby get more relief. It is for this reason that the Division Bench observed in ILR (1953) Nag 997 : AIR 1954 Nagpur 44 (supra) as follows :

"The learned counsel for the applicant, however, says that the preamble itself shows that the condition of registration is imposed for the protection of the persons dealing with those on whom the condition is imposed. In this connection we have to take into consideration the fact that the condition of registration was introduced in the year 1940 when all the other provisions of regulation and control of the transactions of money-lending were already there. So far as the debtor is concerned, this condition of regulation made very little change....." (Pages 1004-5 (of ILR Nag) )

The learned counsel for the non-applicants had to concede that registration of money-lenders made no difference in the position of their debtors- However, relying upon the observations made by Buckley, J. in *Victorian Daylesford Syndicate, Ltd. v. Dott*,<sup>19</sup> he said that a money-lender had to deal obviously and notoriously with his debtors for their protection and therefore he was required to get himself registered. I think these observations do not have, and at no time had, any tearing on the conditions obtaining in this State.

12. In connexion with the submission just) mentioned, we are referred to section 2 of the English Money-lenders Act of 1900 and the way in which that section was construed in (1905) 2 Ch D 624 (supra), *Bonnard v. Dott*,<sup>20</sup> *In re, Robinson's Settlement*, *Gant v. Hobbs*,<sup>21</sup> *Cornelius v. Phillips*,<sup>22</sup> and *Vorst v. Cold-stein*,<sup>23</sup> Section 2 of the English Act reads as follows :

"2. (1) " A money-lender as defined by this Act:

(a) shall register himself as a money-lender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of inland revenue, under his own or usual trade name, and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender; and

(b) shall carry on the money-lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address; and

(c) shall not enter into any agreement in the course of his business as a money-lender with respect to; the advance and repayment of money, or take any security for money in the course of his Business as a money-lender, otherwise than in his registered name; and

(d) shall on reasonable request, and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor.

(2) If a money-lender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on conviction under the summary jurisdiction acts to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both; provided that if the offender be a body corporate that body corporate shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds.

(3) A prosecution under sub-section (1) (a) of this section shall not be instituted except with the consent in England of the attorney-general or solicitor-general, and in Ireland of the attorney-general or solicitor-general for Ireland."

It would appear that the emphasis was upon the usual trade name of a money-lender and the address at which he carried on his business as a moneylender. He had to get himself registered disclosing the trade name and address because he was required to carry on the business in his registered name, and in no other name, and at his registered address, and at no other address, and, in particular, he could not make, in the course of his business, any agreement relating to a loan otherwise than in his registered name. There were special reasons for an enactment of that kind. The English Act was founded on the report of a Select Committee of the House of Commons which sat for two Sessions in 1897 and 1898, The Committee inter alia reported :

"The evidence shows that money-lending transactions frequently owe their inception to misrepresentation of a fraudulent character". "A professional money-lender, after exposure under different aliases, will sometimes resort to such descriptions as a 'wealthy capitalist residing in a private house', a 'widow lady', a 'bank', a 'finance and advance corporation', or even a bank expressly incorporated under act of parliament to advance money at a low rate of interest to respectable persons."

Having regard to the mischief which had to be cured as well as to the cure provided, it would appear that, in the English Act, registration of the name and address of every money-lender was made compulsory in order to remedy the evil flowing from the methods mentioned in the report which he adopted for enabling him to make fraudulent misrepresentations to his debtors. It was for this reason that Buckley, J. observed in 1905-2 Ch 624 (supra), as follows :

"The whole purpose is the protection of the public. The money-lender has to be registered, and has to trade in his registered name obviously and notoriously for the protection of those who deal with him."

Since the circumstances in which Section 2 of the English Act was construed as enacted for the protection of those who dealt with money-lenders are not present here, it would, I think, be unsafe to call in aid the decisions relating to its interpretation for the construction of Section 11-F of the Act. Indeed, the Judicial Committee cautioned against adopting that course when, in *Lasa Din v. Gulab Kunwar*,<sup>24</sup> it observed as follows :

"Their Lordships are not greatly oppressed by the authority of *Reeves v. Butcher*,<sup>25</sup> It is, they think, always dangerous to apply English decisions to the construction of an Indian Act." (Page 385 (of Ind App) )

13. Another argument in support of the invalidity of a loan advanced in contravention of section 11-F of the Act is that it provides for a recurrent penalty because an unregistered moneylender is punishable thereunder for every advance of loan made by him in the course of his business. In the first place, this is only a test, by no means conclusive, in a situation in which the question of construction is whether the Legislature intended to prohibit the act altogether. As I would show hereafter, the true meaning of Section 11-F has to be gathered from a consideration of all the provisions of the Act taken as a whole. Secondly, business is a complex concept which cannot be defined with precision. In my opinion, at least the two elements of continuity and the object of gain should interlace a series of transactions before they could collectively constitute a business. What is punishable under Section 11-F is the collective act of carrying on the business of money-lending without holding a valid registration certificate. It is obvious that this is not identical with the advance of a loan. To furnish a basis for punishment under the section, that advance of loan has to be considered along with other similar advances forming a series, all knitted together with the common elements of continuity and gain. In this connexion, the following observations of Alderson B. in (1845) 14 M and W 452 (supra) are significant :

"He is liable to the penalty, therefore, by carrying on the trade in a house in which these requisites are not complied with; and there is no addition to his criminality if he makes fifty contracts for the sale of tobacco in such a house. It seems to me, therefore, that there is nothing in the act of Parliament to prohibit every act of sale, but that its only effect is to impose a penalty, for the purpose of the revenue, on the carrying on of the trade without complying with its requisites." (Page 464).

In this view, an unregistered moneylender cannot be punished under section 11-F for every advance of loan made by him in the course of his business. Indeed, an individual transaction is not within the mischief of that section at all.

14. Since the Act does not declare every loan advanced in contravention, of section

11-F of the Act to be illegal and void, it is permissible to ascertain the intention of the Legislature in enacting that section *ex-visceribus actus*. Lord Coke said long ago :

"It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best *ex-presseth* the meaning of the makers ..... and this exposition is *ex visceribus actus*."

According to Maxwell, it is an elementary rule that construction is to be made of all parts together, and not of one part only by itself. Such a survey is often indispensable even where the words are the plainest; for the true meaning of any passage is that which (being permissible) best harmonises with the subject and with every other passage of the statute. *Interpretation of Statutes*, Tenth Edition, pages 28-29. B.K. Mukherjea J. (as he then was) pointed out in *Aswini Kumar Ghosh v. Arabinda Bose*,<sup>26</sup> *Darshan Singh v. State of Punjab*,<sup>27</sup> and *Poppatlal Shah v. State of Madras*,<sup>28</sup> that it is a settled rule of construction that, to ascertain the legislative intent all the parts of the statute must be taken together and considered in the light of the general purpose and object of the Act. The learned counsel for the nonapplicants, however, demurred and urged that another part of the Act cannot be called in aid to control the clear effect of Section 11-F. He went on to urge that the contra-indicating other part should be regarded as enacted ignorantly or inattentively. For this proposition, he relied upon Maxwell's *Interpretation of Statutes*, pages 316-17 and *Hariprasad Shivshanker v. A.D. Divelkar*,<sup>28</sup> It is true that when the meaning of the words used in one part of a statute is explicit and clear, another part of it may not be used to control or diminish the effect of the first part. But the short answer to the argument advanced before us is that the true meaning of Section 11-F is, as I have endeavoured to show, not clearly ascertainable from the words therein employed.

In this situation, I am entitled, and indeed bound, to consider other parts of the Act which throw light on the intention of the Legislature. For this view, Hariprasad's case 1957 SCR 121 : AIR 1957 Supreme Court 121, (*supra*), relied upon by the counsel, is itself an authority. Their Lordships of the Supreme Court observed in that case as follows :

"Let us assume that the definition clause is so worded that the requirements laid down therein are fulfilled, whether we give a restricted or a wider meaning : to that extent there is an ambiguity and the definition clause is readily capable of more than one interpretation. What then is the position? We must then see what

light is thrown on the true view to be taken of the definition clause by other provisions of the Act or even by the aim and provisions of subsequent statutes amending the Act or dealing with the same subject-matter". (Pages 132-33 (of SCR) )

15. As shown, Section 7 of the Act requires the Court trying any suit or proceeding relating to a loan to decide, before considering the claim on merits, two preliminary questions, one whether the money-lender, maintained accounts in the manner prescribed and the other whether he furnished to the debtor annual statements of account. Obviously, even these preliminary questions would not arise in the case of a loan advanced by an unregistered money-lender if, as contended, the loan is illegal and void. Therefore, in all such cases, the initial question would be whether the money-lender was duly registered at the time when he advanced the loan. The Legislature, which disclosed an awareness of the need for trying certain matters in contest as preliminary questions, did not require that this matter also be decided before considering the claim on merits. Nay, it made, as I will show in a moment, a contra-indicating provision.

16. Section 11-H of the Act provides that no suit for the recovery of a loan advanced by a money-lender shall proceed unless the Court is satisfied that :

- (i) he holds a valid registration certificate; or
- (ii) 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 in any of the districts of the State.

The words used are "shall proceed" when, if the contention that the contract is vitiated were well-founded, the suit grounded upon it would not lie or be liable to be dismissed. The expression "No suit shall proceed unless" is hardly ever used in relation to a case where the failure, if any, can never be rectified. The inhibition is against proceeding with the suit and postulates that something can be done to remove it. Again, before the Court proceeds with such a suit, it has to be satisfied that one of the two alternatives exists. The moneylender must show either that he holds a valid registration certificate or that he is not required to have such a certificate because he does not carry on the business of money-lending in any of the districts of the State.

The learned counsel for the non-applicants seized upon the word "valid" as meaning valid at the time when the loan was advanced. According to him, the two alternatives in Section 11-H should be read as follows :

(i) He held a valid registration certificate at the time of advancing the loan :

or

(ii) He was not required to have a registration certificate at the time of advancing the loan by reason of the fact that he did not carry on the business of money-lending in any of the districts of the State.

The meaning of the word 'valid' has to be gathered in the light of two other provisions. A registration certificate is in force for a limited period. Also, when it is granted for one district, it does not entitle its holder to carry on the business in another district. Having regard to these two provisions, that word means 'subsisting', 'operative', or 'ineffective' as distinguished from 'expired' or 'ineffective'. The word 'Valid' bearing this meaning has to be read with the expressions "shall proceed", "holds", "is not required" and "does not" employed in section 11-H. Now, there is abundant authority for the view that a law is regarded as always speaking in the present and continuously (Halsbury's Laws of England, Hailsham Edition, Vol. XXXI, p.572; Legislative Methods and Forms : Sir Courtney Ilbert, page 248; and Legislative Drafting and Forms : Sir Alison Russel, Fourth Edition, page 107). So regarded the expressions aforesaid used in the present tense have reference to the time when the suit is about to proceed. It is at that stage that the money-lender must, before the suit can proceed, satisfy the Court that he holds a valid registration certificate or that he does not carry on the business of money-lending in any district of the State. I agree that the two alternatives, if modified as suggested, would not be inapplicable, the first referring to the requirement of having a registration certificate at the time of the advance and the second envisaging the rare case of a money-lender of another State, who having advanced the loan in his own State, prefers to bring his suit for its recovery in a Court in this State. But this, by itself, can be no reason for adopting the modifications, including addition of words, suggested by the learned counsel.

The general rule is not to import into statutes words which are not there. Only when the alternative lies between placing a construction which deprives certain words of all meaning and giving sense and meaning to those words by either modifying them or by adding other words, the latter course may legitimately be adopted. But where the language of the enactment is clear and unambiguous, this cannot be done : *Sri Ram*

*Ram Narain v. State of Bombay*,<sup>30</sup> and *British India General Insurance Co. v. Itbar Singh*,<sup>31</sup> Indeed, when the true meaning of section 11-F has to be ascertained with reference to other provisions made in the Act, it is not legitimate to presume that the section bears a particular construction and then to modify the clear language of Section 11-H so as to make it consistent with sue construction. Since the language of Section 11-H is free from ambiguity, its meaning must be gathered from the words used therein as they are. Whether or not a money-lender suing for the recovery of a loan had, or did not have, a valid registration certificate at the time when he advanced the loan, Section 11-H enables and compels him to obtain a registration certificate unless he satisfies the Court that he holds a certificate which is in force at the time of the suit or he does not require one because he never had, or no longer has, any business in any of the districts of the State. When a money-lender, who requires a registration certificate for carrying on his business and does not have one, brings such a suit, the only effect of that section is to compel him to obtain it, the sanction being that, unless he does so, his suit shall not proceed. In this way Section 11-H obliges a money-lender coming to Court not to carry on his business without a registration certificate in disregard of Section 11-F. It is implicit in this view that an unregistered money-lender can recover a loan advanced by him if he has at the time of the suit a registration certificate which is in force. This is clearly inconsistent with the construction sought to be placed upon Section 11-F to the effect that the contract must be regarded as impliedly prohibited, which, if accepted, would, in effect, render Section 11-H purposeless and unnecessary.

17. The considerations having a bearing on the construction of Section 11-F of the Act may now be summed up. The registration of a money-lender does not afford to his debtors any additional protection not available under the other provisions of the Act. An unregistered money-lender can be punished only for the collective act of carrying on the business of money-lending and not for every loan advanced by him without a registration certificate. In a money-lender'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 his suit. These considerations clearly indicate that section 11-F was not enacted for the protection of persons dealing with money-lenders. 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 money-lender cannot be regarded as impliedly prohibited by Section 11-F.

18. Two cases, AIR 1955 Hyderabad 113 (FB) and 1958 Nag LJ 294, which were strongly relied upon, remain to be noticed. The need for examining the Hyderabad case arises principally because it overruled an earlier case of the same Court. ILR 1952 Hyd 95 : AIR 1952 Hyderabad 58 (FB), which was relied upon in Patiram's case, ILR (1953) Nag 997 : AIR 1954 Nagpur 44. The first Full Bench took the view, without attaching much importance to the amended Section 9 (2) of the Hyderabad Act that a loan advanced by a money-lender having no licence was not vitiated. The five Judges, who decided the subsequent case, were divided in opinion. Two of them affirmed the earlier view. The other three, who were greatly influenced by the amendment of Section 9 (2) ibid providing for dismissal of the suit if the money-lender has no licence, took a different view. Only two of these three Judges recorded separate but concurring opinions. M.A. Ansari, J. observed :

"I do not say that this rule of interpretation cannot be excluded where there be in the Act itself some thing indicating that the Legislature intended the penalty provided in the enactment for its infringements to be sufficient without the transaction being made illegal. But to lead to such conclusion there must be some definite indication in the Act such as one finds in the Punjab Money-Lenders Act and also in C.P.'s Act. The position under the Hyderabad Money-lenders Act was similar before the amendment was introduced, for under section 9 as it then stood suits could not be dismissed for failure to have licence. The position appears to have been radically changed by the amendment."

Jaganmohan Reddy, J. stated :

"On the aforesaid view it is obvious that though the transactions by an unlicensed moneylender on and after the date of the amendment of section 9 are void, transactions that took place before the amendment cannot be affected; It would thus appear that, even according to the majority view in Mohd. Salem's case, AIR 1955 Hyderabad 113 (supra), the earlier Full Bench view is correct in

so far as it interprets the Hyderabad Act without the amendment made in Section 9 (2) thereof. This sufficiently justifies the reliance placed upon it in Patiram's case, ILR (1953) Nag 997 : AIR 1954 Nagpur 44, for construing our Ant, which has no provision similar to Section 9 (2) of the Hyderabad Act.

19. In 1958 Nag LJ 294 (supra), a Division Bench of the Bombay High Court, which was required to construe Sections 11-F and 11-H of the Act, expressly dissented from the view taken in Patiram's case for these reasons :

- (i) In Patiram's case, ILR (1953) Nag 997 : AIR 1954 Nagpur 44, reliance was placed upon Shamshir Ali's case, ILR (1952) Hyd 95 : AIR 1952 Hyd, 58 (FB), which was subsequently overruled.
- (ii) According to Section 11-H, the money-lender had to show that he held a valid registration certificate at the time of the transaction or that he was not then required by law to hold such a certificate.
- (iii) There is no provision in the Act, similar to section 10 of the Bombay Money-lenders Act, providing for stay of the suit in order to give to the money-lender an opportunity to apply for and obtain a registration certificate.
- (iv) Section 11-F is a bar against doing any money-lending business at all without obtaining a certificate of registration.

The first two reasons have already been considered. In regard to the third, it is implicit in Section 11-H that an opportunity has to be given to the money-lender, who, if he does not have a registration certificate, is expected to avail of that opportunity to apply for, and obtain, it. As to the fourth reason, I am of opinion that individual advances are not barred by Section 11-F. In the judgment of the Bombay High Court, reliance was placed upon certain observations of Chagla, C.J. in re, Parashram Laljishet, ILR (1952) Bom 914 , where he had to consider an ingenious argument to the effect that, since an unlicensed moneylender could subsequently obtain a licence under section 10 of the Bombay Act, he could not be punished under section 34 of that Act for carrying on the business of money-lending without a licence. In repelling the argument, the learned Chief Justice observed:

"Section 5 is a bar against doing any money-lending business at all without a licence and if that provision is contravened, Section 34 becomes applicable and

the person doing money-lending business without a licence commits an offence for which he can be punished."

These observations have no bearing on the question of validity of the transactions made in the course of the business of money-lending carried on without a licence. If these transactions were prohibited, they would be void and of no effect. That being so, they could not be subsequently validated by paying any penalty. But section 10 of the Bombay Act postulates that, on fulfilment of certain conditions therein indicated, decrees may be passed on the foot of such transactions. That section itself is, therefore, an answer to the argument that such transactions must be regarded as illegal and void from the inception. Having regard to all these considerations, I am unable to accept, and I say so with the utmost respect, that the view taken in the Bombay High Court represents the correct legal position.

20. In the view I have taken of the question of law referred to us, I would answer it in this way. If a money-lender does not have, and cannot produce, a registration certificate covering the date on which he advanced a loan, his suit for recovery of that loan is, for that reason alone, not liable to be dismissed. It will be sufficient compliance of Section 11-H of the Act if, during the pendency of the suit, he produces a registration certificate which is valid at the time of its production.

**21. P. V. Dixit, C. I.**

I agree.

**22. S. P. Bhargava, J.**

I agree.

Answer accordingly.

Cases Referred.

1. AIR 1952 Hyd 58 (FB)
2. ILR (1953) Nag 997 : AIR 1954 Nag 44
3. AIR 1955 Hyd 113 (FB)
4. Civil Revn. No.770 of 1941, D/-2-12-1942 (Nag)
5. Civil Revn. No.744 of 1949 (Nag)
6. Civil Revn. No.403 of 1951. D/-27-2-1952 (Nag)

7. Civil Revn. No.41 of 1952, D/-6-11-1952 (Nag)
8. Civil Revn. No.543 of 1952, D/-30-9-1953 (Nag)
9. Second Appeal No.81 of 1952, D/-30-8-1957
10. Civil Revn. No.29 of 1957, D/-5-12-1957 (MP)
11. 1939 AC 277, at p.293
12. (1809) 11 East 180
13. (1836) 2 M and W 149
14. (1845) 14 M and W 452
15. (1854) 10 Ex 293
16. 1957-1 QB 267
17. Writ Petns. Nos.145 and 149 to 158 of 1959, D/-30-3-1961
18. 1899 AC 143 at p.157
19. (1905) 2 Ch 624
20. 1906-1 Ch 740, Whiteman v. Sadler, 1910 AC 514
21. 1912-1 Ch 717
22. 1918 AC 199
23. 1924-2 KB 372
24. 59 Ind App 376
25. 1891-2 QB 509
26. 1953 SCR 1
27. 1953 SCR 319
28. 1953 SCR 677 : AIR 1953 SC 274)
29. 1957 SCR 121 : AIR 1957 SC 121
30. 1959 Supp (1) SCR 489
31. 1960-1 SCR 168