

**THE HIGH COURT OF MADHYA PRADESH**  
**FA 241/2008**  
**Firm M/s. Modi Kevalchand through**  
**Partners vs. Balchand (dead) through LRs**

**Gwalior, dtd. 24/01/2019**

Shri N. K. Gupta, Senior Counsel with Shri Ravi Gupta, counsel for the appellants.

None for the respondents though served.

This First Appeal under Section 96 of CPC has been filed against the judgment and decree dated 11/07/2008, passed by First Additional District Judge, Mungawali, District Guna in Civil Suit No.1-B of 2007, by which the suit filed by the appellants/plaintiffs for recovery of Rs.56,260/- with interest has been dismissed.

The necessary facts for the disposal of the present appeal in short are that the plaintiff/appellant had filed a suit against the respondent No.1/defendant for recovery of Rs.80, 900/-.

It is the case of the plaintiff that the plaintiffs' Firm is a partnership Firm and is also engaged in the money lending and is having a money lending licence. The defendant No.1 had cordial relations with the plaintiffs and, therefore, on 09/06/2003 the defendant No.1 had taken a loan of Rs.56,000/- on monthly interest @ Rs.2/- per hundred and the said loan transaction was recorded in the Accounts Book of the Firm. The defendant No.1 had also affixed his thumb impression on the Accounts Book. Thereafter, on 01/01/2004 the plaintiffs had given the cloth amounting to Rs.260/- on loan and the said loan transaction was also recorded in the Accounts Book and the defendant No.1 had acknowledged

that an amount of Rs.56,260/- is outstanding against him. Thereafter, the plaintiffs demanded their money back but the defendant No.1 did not pay the same, therefore, the suit was filed.

The defendant No.1 filed his written statement and denied the plaint averments. He further stated that he has no knowledge about the loan transaction. He further denied that he had affixed any thumb impression on the Accounts Book of the plaintiffs acknowledging the loan transaction of the year 2003-2004. It was further stated that taking advantage of illiteracy of the defendant No.1, the plaintiffs have filed a suit on incorrect facts. It was also stated that the attesting witnesses are the members of the Society to which the plaintiffs belong. He had never received any notice and it was further pleaded that the suit is beyond the period of limitation and has been filed on the basis of forged Accounts Book and accordingly, it was prayed that the suit may be dismissed.

On the basis of the pleadings, the Trial Court framed the following issues:-

- "(1) Whether on 09/06/2003 the plaintiffs' Firm had given Rs.56,000/- on loan to the defendant and whether on 01/01/2004, the cloth worth Rs.260/- was given to the defendant and thus whether the plaintiff had given the loan of Rs.56,260/- at monthly interest @ Rs.2/- per hundred ?
- (2) Whether the plaintiffs had given any written and verbal notice to the defendant ?

(3) Whether the plaintiff had prepared any forged document with regard to loan transaction ?

(4) Whether the suit was filed within the period of limitation ?"

After recording the evidence of the parties, the Trial Court came to the conclusion that the plaintiffs had given Rs.56,000/- to the defendant on 09/06/2003 and had also given the cloth worth Rs.260/- on 01/01/2004 and thus, the defendant had borrowed Rs.56,260/- from the plaintiff at monthly interest @ Rs.2 per hundred. It was held that only verbal notice was given and no written notice was given to the defendant and it was also held that the plaintiffs have not created any forged document, however, it was held that the suit is barred by limitation, and since the plaintiff could not prove licence under the MP Money Lenders Act, therefore, the appellant is not entitled for decree.

It is submitted by the learned Senior Counsel for the appellants that for rejecting the claim of the appellants/ plaintiffs, the Trial Court has held that as the appellants/plaintiffs have failed to prove money lending licence, therefore, they are not entitled for recovery of loan amount. It is submitted by the learned Senior Counsel for the appellants that in the cases of **Ramratan Unkarlal (Firm) Vs. Ku. Virendra Singh**, reported in **1990 (II) MPWN 211**, **Bapulal vs. Mangilal**, reported in **1989 (II) 227** and **Laminarayan vs. Sheikh Hasham**, reported in **1987 (II) MPWN 123**, it has been held by this Court that where the provisions of Section 3, 7 and 11 of Money Lenders Act, 1934 were violated and where the lender of money did not have licence under Money Lenders Act, 1934, then at the most, he is not entitled to receive any interest on the loan

amount and the lender of money would not be entitled for future interest. However, the trial Court has committed a material illegality in dismissing the suit in its totality.

None appears for the defendants though served.

Heard the learned Senior Counsel for the appellants.

So far as the judgments of this Court relied upon by the appellants are concerned, all those judgments were passed prior to incorporation of Section 11B of Madhya Pradesh Money Lenders Act, 1934, which was substituted by MP Act No.13 of 2001 w.e.f. 20/04/2001.

Section 11-B provides the compulsory registration of money lenders and registration certificate, which reads as under:-

**"[11-B. Registration of moneylenders and registration certificate.** - (1) 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 Registering Authority of that area in which he carries on or intends to carry on such business and, on such registration, the Registering Authority shall grant a registration certificate to him in such form as may be prescribed :

Provided that no person being a firm or partner of a firm of moneylenders shall be so registered except upon production before the Registering Authority of a certified copy of an entry showing such person as the firm or partners, as the case may be, made in the register of firms under Section 59 of the Indian Partnership Act, 1932 (No. 9 of 1932) :

Provided further that no registration certificate shall be granted to carry on the business of money lending in the Scheduled Areas referred to in clause (1) of Article 244 of the Constitution.

(2) The application made under sub-section (1) shall be in writing and shall specify the area in which the applicant carries on or intends to carry' on the business of money lending and such other particulars as may be prescribed.]"

Section 11-F bars to carry on business without registration Certificate, which reads as under:-

**" [11F. Bar to carry on business without registration certificate. -**

(1) No person shall carry on the business of money lending in any area unless he holds a valid registration certificate in respect of that area :

Provided that the person who holds a valid registration certificate shall not carry on the business of money lending in the area of a Gram Panchayat or shall not lend money to a member of a Gram Sabha if a resolution to that effect is duly passed by the Gram Sabha of such Gram Panchayat.

(2) Whoever contravenes the provisions of sub-section (1), in any area other than the Scheduled Area, shall be punishable with fine which may extend to two thousand rupees or, if he has previously been convicted of an offence under that sub-section, with fine which may extend to five thousand rupees.

(3) Whoever contravenes the provisions of sub-section (1), in any Scheduled Area, shall be punishable with imprisonment which may extend to two years or with fine which may extend to ten thousand rupees or with both.] "

Section 11-H reads as under:-

**"11-H. Suit not 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 [ in any area of Madhya Pradesh]:

Provided that this Section shall not apply to a suit instituted before the 1<sup>st</sup> October, 1940. "

Thus, from the plain reading of aforesaid Sections, it is clear that no suit for recovery of loan advanced by money lender, shall proceed in the Civil Court until the Court is satisfied that the plaintiff has a registration certificate. The plaintiffs/appellants had claimed that the plaintiffs' Firm is having money lending registration, however, they have failed to prove that it was ever registered under Money Lenders Act, 1934. By incorporation of Section 11- B,

the registration under Money Lenders Act has been made compulsory and any violation has been made punishable for the offence. Section 11-H clearly provides that no suit shall proceed in absence of registration certificate under Money Lenders Act, 1934. Thus, it is clear that as the appellants/plaintiffs have failed to prove that the plaintiffs' Firm was having any registration under Money Lenders Act, 1934, accordingly, this Court is of the view that the Trial Court did not commit any mistake in dismissing the suit *in toto* in spite of the fact that it was found that the defendant No.1 had borrowed money from the plaintiffs.

Accordingly, the judgment and decree dated 11/07/2008 passed by First Additional District Judge, Mungawali, District Guna in Civil Suit No. 1-B of 200 is hereby affirmed.

Appeal fails and is hereby **dismissed**.

**(G.S. Ahluwalia)**  
**Judge**