APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

1955 Dec. 5

KARAMSING NIHALSING PUNJABI (ORIGINAL PLAINTIFF) PETITIONER *v.* MANKUJI ZIVAJI GAIKWAD (ORIGINAL DEFENDANT) OPPONENT.*

Bombay Money-lenders Act, (Bom. XXXI of 1947), s. 14—Plaintiff's suit on promissory note dismissed—Court ordering cancellation of plaintiff's licence as money-lender—Whether such order could be made without issuing notice to show cause why the order be not made.

In a suit filed by the plaintiff on two promissory notes the Court held that the promissory notes were not executed by the defendant and that no consideration was received by him. While dismissing the suit, the Court ordered that all the licences held by the plaintiff as a money-lender be cancelled. On the question whether the jurisdiction under s. 14 of the Bombay Money-lenders Act, 1946, to cancel a licence could be exercised without issuing a notice to the party to show cause why such an order be not made,

Held, that although the Bombay Money-lenders Act, 1946, or the rules framed thereunder do not lay down any procedure to be followed in dealing with a money-lender under s. 14 of the Act, no order could be validly made against him unless he was given a clear notice of the proceedings intended to be taken against him under that section and was afforded a reasonable opportunity to make his defence.

The principle that no judicial order should be passed against a person unless he is heard in self-defence is of such paramount importance that even without any specific provision in the statute or in the rules framed thereunder requiring such notice, natural justice would seem to require that notice should be given to the party against whom an order is proposed to be passed.

CIVIL Revision Application against the decision of S. G. J. D'Costa, Esquire, Civil Judge, Senior Division, at Ahmednagar.

The facts are sufficiently set out in the Judgment.

G. S. Gupte, for the Applicant.

No appearance for the Opponent.

Gajendragadkar J.—This revisional application raises a short procedural point of some importance under s. 14 of the Money-lenders Act XXXI of 1947. The petitioner had sued to recover Rs. 938 from the opponent in the Court of the Civil Judge, Senior Division, Ahmednagar. The claim had been made on two promissory-notes alleged to have been executed by the opponent on September 6, and October 12, 1950 respectively. The opponent resisted the claim on the ground that the promissory notes had not been executed by him and that he had received no consideration under them. This suit was tried by the learned trial Judge as a Small Cause suit. On evidence the learned Judge found that the promissory-notes had not been executed by the opponent and that no consideration had been received by him. That is why the plaintiff's suit was dismissed. While dismissing the plaintiff's suit, the learned Judge

* Civil Revision Application No. 1112 of 1954.

has ordered that all the licences held by the petitioner as a money-lender in the province should be cancelled and that a copy of his order should be sent to the Registrar of Money-lenders by whom licences have been granted for the purpose of entering such particulars in the registers. It is the validity of this order which is disputed before me by Mr. Gupte and his contention is that the learned trial Judge should have given an opportunity to the petitioner to show cause why action against him should not be taken under s. 14 before the learned Judge decided to cancel his licences. That is how the only point which calls for decision in the present revisional application is whether, before exercising its jurisdiction under s. 14 (*1*) (*ii*), a Court trying a suit to which the Money-lenders Act applies is not required to issue a notice to the party against whom the said jurisdiction is sought to be exercised.

Section 14 confers power on the Courts mentioned in that section to cancel or suspend a licence. Section 14 sub-s. (*1*) (*ii*) provides that a Court trying a suit to which the Act applies, if it comes to the conclusion that the money-lender before the Court is unfit to carry on the business of money-lending because he has committed serious contraventions of the provisions of the Act or the rules framed thereunder, may order that all the licences held by such money-lender be cancelled or suspended for such time as it may think fit. The Court may also, if it thinks fit, declare any such money-lender to be disqualified from holding any licence in the State for such time as the Court may think fit. It would be clear that, under the provisions of s. 14 sub-s. (*1*) (*ii*) cls. (*a*) and (*b*), wide powers have been given to the Court trying civil suits to which the Act applies to protect debtors from the menace of unscrupulous money-lenders. Unfortunately, neither s. 14 nor any other section of the Act prescribes the procedure which should be followed in exercising the powers conferred by s. 14. Section 39 of the Act confers upon the State Government authority to make rules for carrying out the purposes of this Act. It does not appear that any rule has been made by the State Government laying down the procedure which should be followed in dealing with amoney-lender under s. 14. The letter of the law, therefore, does not seem to require any notice to be given to the offending money-lender. But I am disposed to take the view that the failure to provide for the issue of a notice to the offending money-lender before action is taken under s. 14 really represents a lacuna in the Act. Legislature no doubt wanted to check the mischief of unscrupulous money-lenders and the power conferred on the Courts to deal with such money-lenders is undoubtedly a salutary power. But there can be no doubt that, even if the money-lender is unscrupulous and deserves to be punished under s. 14, he is entitled

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to be heard in his defence before final orders are passed against him. The principle that no judicial order should be passed against a person unless he is heard in self-defence is of such paramount importance that, even without any specific provision in the statute or in the rules framed thereunder requiring such notice, natural justice would seem to require that notice should be given to the party against whom an order is proposed to be passed under s. 14. I do not think that Legislature intended that the need to give notice to a party proceeded against, which is founded on paramount considerations of equity, justice and fairness, should be inapplicable to the proceedings under s. 14 of the Money-lenders Act. I would, therefore, hold that Mr. Gupte is right when he contends that no order can be validly made against an offending money-lender under s. 14 unless he is given a clear notice of the proceedings intended to be taken against him under the said section and is afforded reasonable opportunity to make his defence.

But apart from this theoretical aspect of the matter, it seems to me that it would be inexpedient to make an order under s. 14 without holding a further enquiry into the allegations made against the money-lender. It is quite likely that in many cases of this character the previous conduct of the money-lender would be invoked against him. Indeed, in the present case, the learned Judge has referred to the previous conduct of the petitioner. He has pointed out that in an earlier suit filed by him in 1952 his licences had been suspended for a period of six months and that in another suit filed by him the promissory-note produced by him and his sworn testimony in its support had been rejected. Indeed, these matters can reasonably and legitimately come on the record only when an enquiry is held against the money-lender under s. 14. In the present case, no such notice appears to have been given to the money-lender and from the record Mr. Gupte is unable to say how the learned Judge has referred to the prior conduct of the petitioner. Presumably the earlier proceedings in question were tried before the learned Judge himself; and he has drawn on his personal knowledge of the money-lender's past conduct without putting it to him in the witness-box. I have no doubt that this procedure is highly irregular and is inconsistent with the requirements of natural justice.

It seems to me that the proper procedure to follow in such cases would be to give notice to the offending money-lender calling upon him to show cause why appropriate orders should not be passed against him under s. 14 of the Act. This notice should be followed by an enquiry in which the money-lender should get a clear idea as to the allegations made against him

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and he should be given an opportunity to meet the said allegations and make his defence.

I must, therefore, hold that the order passed by the learned Judge directing that the licences held by the petitioner in the province should be cancelled and that a copy of his judgment should be sent to the Registrar of Money-lenders should be set aside and the matter sent back to the learned trial Judge with a direction that notice of the proceedings proposed to be taken against the petitioner should be given to him and an enquiry held under s. 14. If after hearing the petitioner the learned Judge is satisfied that the petitioner deserves the penalty contemplated by s. 14, then the learned Judge should pass appropriate orders in that behalf.

In the result, the order passed by the learned Judge dismissing the plaintiff's suit is confirmed, but the consequential order passed against the petitioner under s. 14 is set aside and the matter is sent back to the trial Court for disposal in accordance with law. There will be no order as to costs of this revisional application.

Case sent down.

K. B. S.

APPELLATE CRIMINAL

FULL BENCH

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Gajendragadkar and Mr. Justice Dixit.

1955 Dec. 21

STATE *v.* ISHWARLAL CHHAGANLAL.*

Bombay Prevention of Adulteration Act (Bom. V of 1925), ss. 4 (1) (a) and (b), 19 (1) (c)—Surat Prevention of Adulteration Rules, r. 6 (B) (i)—Government's power to raise presumption—Whether the presumption under r. 6 (B) (i) ultra vires.

Rule 6 (*B*) (*i*) of Surat Prevention of Adulteration Rules is not *ultra vires* s. 19 (*1*) (c) of the Bombay Prevention of Adulteration Act, 1925.

A rule framed by Government under s. 19 (*1*) (c) need not necessarily specify both the deficiency in normal constituents and the addition of extraneous matter.

Section 19 (*1*) (c) permits Government to frame a rule either with regard to the quantity of the deficiency in any of the normal constituents of an article or a rule with regard to the addition of extraneous matter in any article.

In framing the rule it is open to Government either to specify the quantity of deficiency or the quantity of extraneous matter.

State v. *Madan Dhanji*,[1] overruled.

* Criminal Appeal No. 992 of 1955.

1. (1953) 56 Bom. L. R. 128.