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IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCILNo. 16 of 1974O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN:-

MENAKA, wife of M. Deivarayan

Appellant

- and -

LUM KUM CHUM as Executrix of the
last Will of Ng Siew ^{and now} deceased
appointed by Order of the
Federal Court, dated 18th February
1974, to represent the Estate of
Ng Siew SanRespondent

RECORD OF PROCEEDINGS

WILSON FREEMAN,
6/8 Westminster Palace Gardens,
Artillery Row, London SW1P 1RL.

Solicitors for the Appellants

LOVELL WHITE & KING,
1, Serjeants Inn,
London, EC4Y 1LP.

Solicitors for the Respondent.

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No.16 of 1974

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

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last Will of Ng Siew San now
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Federal Court, dated 18th February,
1974, to represent the Estate of
Ng Siew San

Respondent

RECORD OF PROCEEDINGS

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Order granting Conditional Leave to Appeal	18th February 1973

1.

No. 1

ORIGINATING SUMMONS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.59 OF 1971

Between

Menaka, wife of M. Deivarayan ... Applicant

And

Ng Siew San ... Respondent

ORIGINATING SUMMONS

10 LET NG SIEW SAN of No.446-7½ Mile Ulu Klang
Road, Ulu Klang, Selangor within eight (8) days
after the service of this Summons upon him
inclusive of the day of such service cause an
appearance to be entered for him to this Summons
which is issued upon the application of Menaka
wife of M. Deivarayan for an Order that the land
held under Grants for Land Nos. 7695, 8243, 10624,
18012 and Certificates of Title Nos. 12866 and 12867
20 for Lot Nos. 125, 114, 114A, 327, 321 and 323
respectively in the Township of Tanjong Malim in
the District of Batang Padang totalling in area
0 acres 3 Roods 25-52 Poles and charged to Menaka
wife of M. Deivarayan under the charge registered
in the Register of Charges Presentation No.167/65
Volume 204 Folio 94 be sold by public auction
under the direction of this Honourable Court
under Section 256 of the National Land Code to
satisfy the principal sum of \$20,000.00 with
30 interest thereon at the rate of 12% per annum
from the 11th day of April 1965 to date of payment
and costs.

Dated this 17th day of February 1971

Sd. Anwar Ismail.
Senior Asst. Registrar,
High Court, Kuala Lumpur.

This Summons was taken out by Messrs. Shearn,
Delamore & Co., and Drew & Napier, Solicitors for
the Applicant abovenamed and whose address for
service is No.2, Benteng, Kuala Lumpur.

In the High
Court

No. 1

Originating
Summons

17th February
1971

In the High Court

No. 1

Originating Summons

17th February 1971

(continued)

This Summons will be supported by the Affidavit of N. AR. K. Nachiappa Chettiar son of Kasiviswanathan Chettiar affirmed on the 13th day of February 1971.

The Respondent may appear hereto by entering appearance either personally or by his Advocates and Solicitors at the Registry of the High Court at Kuala Lumpur.

NOTE - If the Respondent does not enter appearance within the time and at the place above-mentioned such order will be made and proceedings taken as the Judge may think just and expedient.

10

To:- Ng Siew San,
No. 446-7 $\frac{1}{2}$ Mile Ulu Klang Road,
Ulu Klang,
Selangor.

No. 2

Affidavit in support of Originating Summons

13th February 1971

No. 2

AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

20

ORIGINATING SUMMONS NO.59 OF 1971

BETWEEN

Menaka, wife of M. Deivarayan ... Applicant

And

Ng Siew San ... Respondent

A F F I D A V I T

I, N. AR. K. NACHIAPPA CHETTIAR son of Kasiviswanathan Chettiar of full age residing at No.30 Leboh Ampang, Kuala Lumpur affirm and say as follows:-

30

1. I am the Attorney of Menaka wife of M. Deivarayan the Applicant herein.

2. By a Charge dated 11th day of January 1965 Presentation No. 167/65 in Volume 204 Folio 94 the

Respondent charged to Menaka wife of M. Deivarayan the Applicant herein the land under Grants for Land Nos. 7695, 8243, 10624, 18012 and Certificates of Title Nos. 12866 and 12867 for Lot Nos. 125, 114, 114A, 327, 321 and 323 respectively in the Township of Tanjong Malim in the District of Batang Padang totalling in area 0 acre 3 Roods 25.52 Poles as security for a loan of \$20,000.00 and interest thereon.

In the High Court

No. 2

Affidavit in support of Originating Summons

13th February 1971

(continued)

10 A copy of the said Charge is annexed hereto and marked "A"

3. The Respondent covenanted with the Applicant as Chargee inter alia to pay the said sum of \$20,000.00 on Demand and to pay interest thereon at the rate of 12% per annum such interest to be paid by equal monthly payment of \$200.00 on the 11th day of every month the first of such payment to be made on the 11th day of February 1965.

20 4. The Respondent paid towards interest part payment of \$200.00 on 16.3.1965 and \$400.00 on 28.8.1969.

5. The Respondent has made default by failing to pay on Demand the sum of \$20,000.00 being the principal sum secured by the said Charge and failing to pay the aforesaid interest for the period from 11.4.1965 to 1.2.1971 amounting to \$13,940.00.

30 6. I am informed and verily believe that on the 3rd day of October, 1970 my Solicitors on my instructions sent to the Respondents Notice (Form 16E) under Section 255 of the National Land Code in respect of the said Charge. A copy of the said Chargee's Notice is annexed hereto and marked "B". The Respondent has failed to pay the monies due and owing me under the said Charge within the time specified in the said Notice.

7. I therefore pray for an Order in terms of the Originating Summons filed herein.

40 AFFIRMED by the said N.A.R.K. NACHIAPPA CHETTIAR son of Kasiviswanathan Chettiar at Kuala Lumpur this 13th day of February 1971 at 11.45 a.m./p.m.)

Sd. N.A.R.K. Nachiappa Chettiar

In the High Court

Before me,

No. 2

Sd. S. Karunanithi
Commissioner for Oaths.

Affidavit in support of Originating Summons

I hereby certify that the above Affidavit was read, translated and explained in my presence to the deponent who seemed perfectly to understand it and declared to me that he did understand it and made his signature in my presence.

13th February 1971

Sd. S. Karunanithi
Commissioner for Oaths.

(continued)

10

This Affidavit is filed by Messrs. Shearn, Delamore & Company and Drew & Napier, Solicitors for the Applicant abovenamed and whose address for service is No.2 Benteng, Kuala Lumpur.

DUPLICATE

MEMORANDUM OF CHARGE

SCHEDULE XXIV(a)

Under section 129 of the Land Code Presentation No. 167/65 Vol.204 Fol. 911

I/We NG SIEW SAN of No.30A Lorong Kapar, Klang Road, Kuala Lumpur being registered as the proprietor subject to the leases charges or other registered interests stated in the document of title thereto of the whole of the land held under Grants for Land Nos. 7695, 8243, 10624, 18012 and Certificates of Title Nos. 12866 and 12867 for lots Nos. 125, 114, 114A, 327, 321 and 323 respectively in the Township of Tanjong Malim in the district of Batang Padang totalling in area Nil acres 3 roods 25.32 poles in consideration of the sum of \$20,000/- (Dollars Twenty Thousand) only lent to me/we by MENAKA wife of M. Deivarayan of No.30 Leboh Ampang, Kuala Lumpur (hereinafter called the said chargee) the receipt of which sum I/we hereby acknowledge do hereby agree

20

30

Firstly that I/we will pay to her the said chargee at Kuala Lumpur the above sum of \$20,000/- ON DEMAND.

Secondly that I/we will pay interest on the said sum at the rate of \$12/- by the hundred

40

dollars in the year by equal payments of \$200/- on the day of every month at Kuala Lumpur the first of such payments to be made on the 11th day of February 1965.

In the High Court

No. 2

Affidavit in support of Originating Summons

13th February 1971

(continued)

Thirdly that I/we will not transfer, sell, charge or otherwise deal with the said land without the written consent of the said chargee first had and obtained.

10 Fourthly that the said chargee shall have the custody or possession of the issue document of title of the land charged herein.

and for the better securing to the said chargee the repayment in manner aforesaid of the principal sum and interest I/we hereby charge the land above described with such principal sum and interest and subject to the aforesaid the said chargee shall be entitled to all the powers and remedies given to a chargee by the Land Code.

20 N. G. SIEW SAN
Signature of Chargor

I, MENAKA wife of M. Deivarayan of No.30 Laboh Ampang, Kuala Lumpur do hereby accept this charge on the terms stated.

P/A MENAKA WIFE OF M. DEIVARAYAN
By HER Attorney
?

Signature of Chargee

Dated this 11th day of January 1965.

30 Memorial made in the register of volume (as stated in the registers) folio (as stated in the registers) this 13th day of January 1965 at 10.15 a.m.

This is the Exhibit marked "A" referred to in the annexed Affidavit of N.A.R.K. Nachiappa Chettiar affirmed on the 13th day of February 1971.

Sd: S. Karunanithi. 13/2/1971.
Commissioner for Oaths,
High Court, Kuala Lumpur.

5A.

FIRST SCHEDULE
(Section 4)
FORM A

In the High
Court

—
No. 2

Affidavit in
support of
Originating
Summons

13th February
1971

(continued)

I, TAN TEOW BOK an Advocate and Solicitor of the Supreme Court of the Federation of Malaya hereby testify that the signature of the chargor written in my presence on this 11th day of January 1965 is according to my own personal knowledge the true signature of the said NG SIEW SAN who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

As witness my hand this 11th day of January 1965

Advocate and Solicitor,
Kuala Lumpur.

FIRST SCHEDULE
(Section 4)
FORM A

I, TAN TEOW BOK an Advocate and Solicitor of the Supreme Court of the Federation of Malaya hereby testify that the signature of the chargee's Attorney written in my presence on this 11th day of January 1965 is according to my own personal knowledge the true signature of the said MANICKAM CHETTIAR son of SOMASUNDARAM CHETTIAR who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

As witness my hand this 11th day of January 1965.

Advocate and Solicitor,
Kuala Lumpur.

In the High Court

No. 2

Affidavit in support of Originating Summons

13th February 1971

(continued)

-B- NATIONAL LAND CODE FORM 16E (Section 255)

This is the Exhibit marked "B" referred to in the annexed Affidavit of N.A.R.K. Nachiappa Chettiar affirmed on the 13th day of February 1971.

Sd. S. Karunanithi. 13/2/1971. Commissioner for Oaths, High Court, Kuala Lumpur.

10

DEMAND FOR PAYMENT OF A PRINCIPAL SUM

To: NG SIEW SAN, No. 446 - 7 1/2 Mile, Ulu Klang Road, Ulu Klang, Selangor chargor under the charge described in the schedule below of the land so described.

WHEREAS the principal sum secured by the charge amounts to \$20,000.00 and is payable on demand;

20

I, as chargee, by virtue of the powers conferred by Section 255 of the National Land Code, hereby require payment of that sum together with arrears of interest due from the 11th day of April 1965 forthwith.

And take notice that, if the said sum and arrears of interest is not paid within one month of the service of this notice, I shall apply for an order of sale.

Dated this 3rd day of October, 1970.

30

MENAKA Wife of M. Deivarayan by her Attorney N. A.R.K. Nachiappa Chettiar

Signature of Chargee

(Schedule)

SCHEDULE OF LAND

Mukim or Town	Lot No.	Description and No. of Title	Share of land (If any)	Registered No. of Lease/ sublease (If any)	Registered No. of Charge (If any)
(1)	(2)	(3)	(4)	(5)	(6)
10	Tanjong Malim	125 Grant No. 7695	whole	Nil) Presenta- tion No. 167/65 Volume 204 Folio 94.
"	"	114 "	8243 whole	Nil	
"	"	114A "	10624 whole	Nil	
"	"	327	18012 whole	Nil	
"	"	321 C.T.	12866 whole	Nil	
"	"	323 C.T.	12867 whole	Nil)

In the High Court

No. 2

Affidavit in support of Originating Summons

13th February 1971

(continued)

No. 3

No. 3

AMENDED AFFIDAVIT OF NG SIEW SAN

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.59 OF 1971

Amended Affidavit of Ng Siew San

8th February 1972

Amended this 7th day of February, 1972 pursuant to Order of Mr. Justice Dato S.M. Yong, dated 7th February, 1972.

VOON THONG SHIN
.....
Senior Assistant Registrar,
High Court, Kuala Lumpur.

BETWEEN

MENAKA Wife of Deivarayan ... Applicant

AND

Ng Siew San ... Respondent

AMENDED AFFIDAVIT

I, Ng Siew San of full age and Malaysian Citizen residing at No.446, 7 $\frac{1}{2}$ Milestone, Ulu Klang Road, Ulu Klang, Selangor, make Oath and say as follows:-

10

20

30

In the High
Court

—
No. 3

Amended
Affidavit of
Ng Siew San

8th February
1972

(continued)

1. The Affidavit of N.AR.K. Nachiappa Chettiar s/o Kasiviswanathan Chettiar, the Attorney of Menaka wife of Deivarayan affirmed herein on the 13th day of February, 1971 and filed herein in support of the Originating Summons and the exhibit annexed thereto have been read and explained to me and I understand the same.

2. I am the Chargor/Respondent herein and I oppose the application of the Chargee/Applicant.

3. I am advised by my solicitors and I verily believe that as from 1st day of July, 1964 until June, 1965, the applicant Menaka wife of Deivarayan was licensed with the Registrar of Moneylenders to carry on the business of Moneylenders under the authorised name of AR.PR.M. Firm at the authorised address at No.30 Leboh Ampang, Kuala Lumpur.

10

4. A photostat copy of the Application submitted by the Applicant, Menaka wife of Deivarayan to the Registrar of Moneylenders is annexed hereto and marked "N.S.1."

20

5. I am advised by my solicitors and verily believe that as from the 1st day of November, 1964 until June 1965 Manickham Chettiar s/o Soma Sundram Chettiar was licensed with the Registrar of Moneylenders to carry on the business of Moneylending as an Agent of AR.PR.M. Firm under the authorised name of AR.PR.M. Firm at the authorised address at No.30, Leboh Ampang, Kuala Lumpur. The partners of the said AR.PR.M. Firm were Menala Deivarayan and AL.Chockalingam.

30

6. A photostat copy of the First application submitted by Manickam Chettiar s/o Soma Sundram Chettiar as an agent of AR.PR.M. Firm to the Registrar of Moneylenders is annexed hereto and marked "N.S.2".

7. Manickam Chettiar s/o Soma Sundram Chettiar, having been licensed under the Moneylenders Ordinance 1951 to carry on the business of Moneylending under the authorised name of AR.PR.M. Firm in breach of Section 8 subsection (b) of the Moneylenders Ordinance 1951 has carried on the business of moneylending in the Name of Menaka wife of Deivarayan, otherwise than the authorised name of AR.PR.M. Firm.

40

8. Neither in the Note or Memorandum which the Manickam Chettiar took and a copy of which is annexed hereto and marked as exhibit "N.S.3" nor in the Security the authorised name of AR.PR.M. Firm was disclosed.

In the High
Court

—
No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

(continued)

10 9. I am advised and verily believe that in breach of Section 8 Sub-Section (c) of the Moneylenders Ordinance 1951 Manickam Chettiar s/o Soma Sundram Chettiar in the course of his business as a Money-
lender has entered into the agreement herein regarding advance and repayment of money and has taken the charge herein as security for money advanced otherwise than in his authorised name of AR.PR.M. Firm and therefore the Chargee/Applicant's claim is illegal, void and unenforceable.

20 10. The licence granted by the Registrar of Moneylenders to Manickam Chettiar s/o Soma Sundram Chettiar to carry on the business of moneylending as an agent of AR.PR.M. Firm does not permit
Manickam Chettiar to carry on the business of moneylending in three ways at the same time namely:- in the name of AR.PR.M. Firm on behalf of the partners of AR.PR.M. Firm and also separately on behalf of Menaka wife of Deivarayan the applicant herein, in her personal name and AL. Chockalingam in his own individual name.

30 11. The Note or Memorandum entered into between myself and Manickam Chettiar is insufficient and incomplete as all the terms of the Contract were not included and in particular the following terms:-

(a) It was expressly agreed between Manickam Chettiar and myself that Manickam Chettiar should lent a further sum on the security of the land charged herein should I require a further sum.

(b) The following terms in the Security were not included:-

40 (i) I will not transfer, sell, charge or otherwise deal with the land without the written consent of the said chargee first had and obtained.

(ii) That the said chargee shall have the custody or possession of the issue document of title of land charged herein.

In the High
Court

—
No. 3

Amended
Affidavit of
Ng Siew San

8th February
1972

(continued)

12. As agreed between Manickam Chettiar and myself that he should advance further sum on the security of the land charged, on the 6th day of February 1965, Manickam Chettiar advanced to me a sum of \$3,000.00 and took a Promissory Note and the land secured in the Charge herein as a further security. A photostat copy of the Promissory Note and the writing on the reverse side of the Promissory Note regarding collateral security are annexed hereto and marked "N.S.4" and "N.S.5".

10

13. Section 16 of the Moneylenders Ordinance 1951 has not been complied with as the terms on which the sum of \$20,000.00 was lent on the 11th day of January 1965 are subsequently varied by the Agreement between myself and Manickam Chettiar as a result of which a further sum of \$3,000.00 was advanced on the security of the land charged herein.

14. On the 11th day of October, 1967 I sent a letter to Messrs. Shearn, Delamore & Company, Solicitors for the Applicant/Chargee for particulars of Statement of Accounts regarding the above charge. The statutory fee of 50 cents in stamp was enclosed. A copy of the letter is annexed hereto and marked "N.S.6". However on the 17th day of October, 1967 I was supplied with the Statement of Account which has no connection with the Charge herein. The copy of the Statement of Account is annexed hereto and marked "N.S.7". I am advised and verily believe that the Applicant/Chargee has not complied with Section 19 of the Moneylenders Ordinance 1951.

20

30

15. I am given to understand and verily believe that the Applicant has not kept any or caused to be kept any regular books of account as required by Section 18 of the Moneylenders Ordinance, 1951.

15A. The Applicant/Chargee has not complied with Section 21(1) of the Moneylenders Ordinance, 1951.

16. Wherefore I humbly pray:-

(a) (1) That the Application of the Chargee/
Applicant be dismissed with costs.

40

(b) (2) Declaration that the contract of loan dated 11.1.1965 entered into between the Respondent and the Applicant and

the Charge presentation No.167/65 Vol.204 Folio 94 dated 11.1.1965 executed by the Respondent in favour of the Applicant is illegal and void and/or unenforceable.

In the High Court

—
No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

(continued)

10 (3) In the event of the Court declaring that the Contract of loan and the Charge aforesaid is illegal and void, for an Order that the Registrar of Title do cancel the Memorials appearing on the Issue Document of Title and on the Register of Documents of Title to lands charged by the Respondent in favour of the Applicant as security for loan dated 11.1.1965.

(4) In the event of the Court declaring that the Contract of loan and the Charge aforesaid is illegal and unenforceable for the following reliefs:-

20 (b) (a) That the Chargee/Applicant do deliver up the Note or Memorandum for cancellation.

(e) (b) That the Chargee/Applicant do within 14 days from the date of the Order deliver to the Chargor/Respondent or his Solicitors the duplicate copy of the Memorandum of the Charge and issue documents of title relating to the aforesaid lands.

30 (d) (c) That the Chargee/Applicant do within the said 14 days execute a good and valid registrable Memorandum of Discharge, discharging the Charge presentation No.167/65 Volume 204 Folio 94 dated 11th day of January, 1965 and deliver the same to the Chargor/Respondent or his Solicitors and failing the same that the Senior Assistant Registrar, High Court, Kuala Lumpur be empowered to execute the said Memorandum of Discharge for and on behalf of the said Chargee/Applicant.

40

In the High
Court

—
No. 3

Amended
Affidavit of
Ng Siew San

8th February
1972

(continued)

AFFIRMED by the abovenamed at)
Kuala Lumpur this 8th day of }
February, 1972 at the hour of } Sd. Ng Siew San.
3.15 p.m.

Before me,

Sd. Soo Kok Wong
Pesurohjaya Sumpah,
Mahkamah Tinggi,
Kuala Lumpur.

I hereby certify that I have read, explained
and translated the contents of this document to
the Deponent herein who declared to me that he
perfectly understands the same and has made his
signature in my presence.

10

Sd. Soo Kok Wong,
Pesurohjaya Sumpah,
Mahkamah Tinggi,
Kuala Lumpur.

This Affidavit is filed by Messrs. M. Segaram
& Co., Advocates & Solicitors of Nos. 17 & 19,
Jalan Silang, Kuala Lumpur, Solicitors for the
Chargor/Respondent abovenamed.

20

FIRST SCHEDULE
(RULE 2)

"A" Licence
Application for Moneylenders' Licence

True name of the applicant (if applicant is a company the name of the company should be stated here)	MENAKA DEIVARAYAN Managing Partner of AR.PR.M. Firm (I.C.No.9547009).
Private address of applicant or in the case of a company the registered address of the company.	26-B Circular Road, Kuala Lumpur
Name under which it is desired to carry on business as moneylender.	AR.PR.M. FIRM.
Address at which it is desired to carry on business+	30, Ampang Street, Kuala Lumpur

In the High
Court

No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

(continued)

True name and address of partners, if any. AL.CHOCKALINGHAM, No.7,
Dr. Nair Road, T.Nagar,
Madras-17, S. India.

Name of person or persons (other than owner or partners) responsible or proposed to be responsible for the management of the business. In case of a company the names of the directors, treasurer and secretary should be given. None

10

Date of issue of any previous licence under the moneylenders Ordinance, 1951 and the name and address authorised by such licence. Licence No.A396/63-64.
Issued on 24.2.1964.
MENAKA w/o M.DEIVARAYAN
under the name of
AR.PR.M.FIRM, 30 Ampang
St., Kuala Lumpur.

20

If registered under the Registration of Business Ordinance, 1947, date of registration and name and address under which registered. 7th November, 1963
AR.PR.M.Firm, No.128382
30, Ampang Street,
Kuala Lumpur

30

Particulars of any conviction under the Moneylenders Ordinance, 1951 of the applicant, his partner, or any person responsible, or proposed to be responsible, for the management of the business. NIL.

40

Particulars of any Order under sec.10 of the Moneylenders Ordinance, 1951, suspending or forfeiting any licence of, or disqualifying from obtaining a licence, the applicant or his partner or any person responsible or proposed to be responsible for the management of the business. NIL

In the High Court

No. 3

Amended Affidavit of Ng Siew San

8th February 1972

(continued)

Particulars of any refusal of a licence to the applicant, or his partners or any person responsible for the management of the business.

NIL

Date: 29th June, 1964 Signature: Menaka Deivarayan

The address to be entered is the address of the Head Office or a branch in respect of which the application is being made. A separate application must be made in respect of each branch. The Applicant must be prepared, if necessary, to produce these certificates.

10

CERTIFIED TRUE COPY

Sd. Illegible 4/3/71.
Senior Assistant Registrar.
High Court, Kuala Lumpur.

EXAMINED BY

Sd. Illegible
Clerk, High Court,
Kuala Lumpur.

20

This is the Exhibit marked "N.S.1" referred to in the Affidavit of Ng Siew San sworn to before me this 8th day of February 1972.

Sd.
Commissioner for Oaths
High Court, Kuala Lumpur.

"FORM B"

**APPLICATION FOR MONEYLENDERS LICENCE
AS AGENT**

In the High
Court

—
No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

(continued)

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| | 1. True Name of Applicant
Age: 59 years | MANICKAM CHETTIAR s/o
SOMASUNDARAM CHETTIAR
I/C No.0426357 |
| | 2. Private address of principal. | 30, Leboh Ampang,
Kuala Lumpur. |
| | 3. True name of principal. | AR.PR.M. FIRM. |
| 10 | 4. If principal a firm true name of partners. | (1) MENAKA DEIVARAYAN
PA.No.867/64.
(2) AL. CHOCKALINGAM
PA.No.1324/63. |
| | 5. Private address of principal (or if principal a firm, or partners.) | 30, Leboh Ampang,
Kuala Lumpur. |
| 20 | 6. If business of principal registered under the Registration and Licensing of Business Ord. 1953, date of registration and name and address under which registered.* | 7th November, 1963.
AR.PR.M. FIRM,
30, Leboh Ampang,
Kuala Lumpur.

No.128382 |
| | 7. Name under which it is desired to carry on business as a money-lender. | AR.PR.M. FIRM. |
| 30 | 8. Address at which it is desired to carry on business as a money-lender. | 30, Leboh Ampang,
Kuala Lumpur. |
| 40 | 9. Date of issue of any previous licence to the applicant or the principal or any previous agent of the principal and name and address authorised by such licence. | Licence issued on 24.2.1964 and it is renewed.
MENAKA w/o M.DEIVARAYAN,
UNDER THE NAME OF
AR.PR.M. FIRM, 30 Leboh
Ampang, Kuala Lumpur. |

In the High Court

No. 3

Amended Affidavit of Ng Siew San

8th February 1972

(continued)

10. Particulars of any convictions under the Moneylenders Ord.1951, of the applicant or the principal of any previous agent of the principal. NIL.

11. Particulars of any order under the section 10 of the Moneylenders Ord. 1951, suspending or forfeiting any licence of, or disqualifying from obtaining a licence, the applicant or the principal. NIL.

10

12. Particulars of any refusal of a licence to the applicant, or the principal or any previous agent of the principal. NIL.

DATE: 21.9.1964.

Signed: Manickam Chettiar.
I.C. No. 0426357.

The applicant must be prepared, if necessary, to produce these certificates.
The address to be entered is the address of the Head Office or a branch in respect of which the application is being made.
A separate application must be made in respect of each branch.

20

CERTIFIED TRUE COPY

Sd. Illegible. 4/3/71.
.....
Senior Assistant Registrar,
High Court, Kuala Lumpur.

EXAMINED BY

Sd. Illegible.
Clerk,
High Court, Kuala Lumpur.

30

This is the Exhibit marked "N.S.2" referred to in the Affidavit of Ng Siew San sworn to before me this 8th day of February 1972.

Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

COPY

In the High Court

MONEYLENDERS ORDINANCE 1951
Stamp 5.1.65
MEMORANDUM UNDER SECTION 16

No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

(continued)

This is the Exhibit marked "N.S.3"
referred to in the Affidavit of
Ng Siew San sworn to before me
this 8th day of February 1972.

10 Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

Name of Lender: Menaka wife of M. Deivarayan

Address of Lender: No.30 Leboh Ampang, Kuala Lumpur.

Name of Borrower/s: Ng Siew San

Address of Borrower/s: No.30A Lorong Kapar, Klang
Road, Kuala Lumpur.

Date of Loan: 11th January 1965.

Principal Sum: \$20,000/- (Dollars Twenty thousand)

20 Rate of Interest: Twelve (12) per cent per annum
by equal payments of \$200/- on the 11th day of
every month, the first of such payment to be made
on the 11th day of February 1965.

Period of Loan: ON DEMAND

The Principal sum shall be payable on demand
together with interest thereon from the date of
loan to the date of demand at the aforesaid rate.

30 In default of payment on demand of the
principal and interest as aforesaid simple interest
at the rate aforesaid shall be paid thereon or on
such portion thereof as remains unpaid from the
date of demand to the date of payment.

The borrower/s shall before receipt of the
above-mentioned sum of \$20,000/- (Dollars TWENTY
THOUSAND) execute in favour of the Lender a
Memorandum of Charge over the lands held under
Grants for Land Nos.7695, 8243, 10624, 18012 and
Certificates of Title Nos. 12866 and 12867 for Lots
Nos. 125, 114, 114A, 327, 321 and 323 Township of
Tanjong Malim District of Batang Padang as security

In the High
Court

No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

(continued)

for the repayment of the same and interest thereon
as aforesaid.

MENAKA WIFE OF M. DEIVARAYAN NG Siew San
By HER Attorney Signature of Borrower
Manickam-Chettiar
Signature of Agent of Lender

I/we the abovementioned NG SIEW SAN of 30A
Lorong Kapar, Klang Road, Kuala Lumpur hereby
acknowledge having this 11th day of January 1965
received from the lender/agent the abovementioned
sum of \$20,000/- after the above Memorandum has
been signed by me/us, and by the lender/agent of
lender and after the Memorandum of charge was
executed by me/us and I/we also acknowledge that
before receiving the said sum and before giving the
said Memorandum of Charge the lender a copy of the
Memorandum (including this acknowledgment except
my/our signature/s thereto) authenticated by the
lender/agent of the lender was delivered to and
received by me/each of us.

10

Signature of borrower: NG SIEW SAN

20

The above partly printed and partly written
document is hereby authenticated by me as copy of
the original Memorandum of which it purports to be
a copy of an acknowledgment at the foot of the
original document prepared for the signature/s of
the abovenamed borrower/s but not yet signed by the
borrower/s.

MENAKA WIFE OF M. DEIVARAYAN
By HER Attorney
Manickam-Chettiar

30

Signature of Agent of Lender

Date: 11th January 1965.

I, TAN TEOW BOK an Advocate and Solicitor of
the High Court in Malaya practising at Kuala Lumpur
hereby testify that the signature of the Borrower
to the within Memorandum was written in my presence
on this 11th day of January 1965 the same having
been read over, translated and explained by me to
the Borrower who appeared to understand the meaning
of the same and that the sum of dollars twenty
thousand (\$20,000/-) mentioned herein was paid
over by the Lender to the Borrower in my presence.

40

Dated at Kuala Lumpur this 11th day of January
1965.

Sd. Tan Teow Bok (TAN TEOW BOK)
Advocate and Solicitor
Kuala Lumpur.

7536
\$3000/-

Fee Paid stamp

6th February 1965

In the High
Court

—
No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

(continued)

10 ON DEMAND MONTHS AFTER DATE I/We
the undersigned I, NG SIEW SAN (I/C 1491994) of
No.30A Lorong Kapar, Klang Road, Kuala Lumpur
jointly and severally promise to pay to MENAKA wife
of M. Deivarayan of No.30 Leboh Ampang, Kuala Lumpur
hereinafter called the Lender or order the sum of
Dollars Three thousand only \$3000/- (being the
principal of a loan this day lent to me/us by the
Lender) with interest thereon at the rate of twelve
per centum per annum from the date hereof until
payment. For Value Received.

Signature of Borrower/s NG Siew San

Countersignature of the Lender/the Agent of the
Lender Manickam Chettiar

(To be completed if the borrower/s does/do not
understand English)

20 I, K. V. Chelliah an Advocate & Solicitor of
the High Court of No. 1 Klyne Street, Kuala Lumpur
hereby testify that the signature/s of the Borrower/s
to the above promissory note was/were written in
my presence on this 6th day of February 1965 the
same having been read over, translated and
explained to the Borrower/s who appeared to under-
stand the meaning of the same and that the sum of
\$3000/- abovementioned was paid over by the Lender/
the Agent of the Lender of the Borrower/s in my
30 presence.

K. V. CHELLIAH

40 I/We the abovenamed Ng Siew San (I/C 1491994)
of No.30A Lorong Kapar, Klang Road, Kuala Lumpur
hereby acknowledge to have received this 6th day
of February 1965 from the Lender the abovementioned
sum of Dollars Three thousand only (\$3000/-) after
the above promissory note had been signed by me/us
and countersigned by the Lender/the Agent of the
Lender and I/we also acknowledge that before
receiving the said sum and before giving this
promissory note to the Lender/the Agent of the
Lender a copy thereof (including this acknowledg-
ment except my/our signature/s thereto) authenti-
cated by the Lender/the Agent of the Lender was
delivered to and received by me/each of us.

Signature of Borrower/s NG Siew San

STAMP

In the High Court

No. 3

Amended Affidavit of Ng Siew San 8th February 1972

(continued)

This is the Exhibit marked "N.S.4" referred to in the Affidavit of Ng Siew San sworn to before me this 8th day of February 1972.

Sd. Commissioner for Oaths, High Court, Kuala Lumpur.

(SEAL) 7853 Stamp Office, Kuala Lumpur. 8.11.65.

(SEAL) Federation of Malaya Fees Paid. 00300.

10

Sd. Illegible

As collateral security for the repayment of the loan of dollars three thousand only (\$3000/-) together with interest thereon at the rate of twelve per cent (12%) per annum I the undersigned Ng Siew San (I/C 1491994) of No.30A Lorong Kapar, Klang Road, Kuala Lumpur hereby deposit with the lender Menaka wife of M. Deivarayan of No.30, Leboh Ampang, Kuala Lumpur by title deeds in respect of the land held under Perak Grants for land Nos. 7695, 8243, 10624, 18012, and Certificate of Title Nos. 12866 and 12867 for lots Nos. 125, 114, 114A, 327, 321 and 323 respectively in the Township of Tanjong Malim with the intention of creating a lien thereon.

20

Dated at Kuala Lumpur this 6th day of February, 1965.

Signed by the Borrower) Ng Siew San (I/C 1491994)) Sd. Ng Siew San. in the presence of:-)

30

Sd. K.V. Chelliah.

Advocate & Solicitor, Kuala Lumpur.

This is the Exhibit marked "N.S.5" referred to in the Affidavit of Ng Siew San sworn to before me this 8th day of February 1972.

Sd. Commissioner for Oaths, High Court, Kuala Lumpur.

40

Ng Siew San
No.446-7½ Mile Ulu Klang
Road,
Ulu Klang, Selangor.
11th October, 1967.

In the High
Court

—
No. 3

Amended
Affidavit of
Ng Siew San
8th February
1972

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

(continued)

10 Dear Sirs,
Charge Presentation No.167/65 Volume
204 Folio 94.

I am in receipt of your letter No.SD(K)19776/1
dated the 5th October, 1967 written on behalf of
your client, Menaka w/o M. Deivarayan.

I admit execution of the above charge on the
11th January, 1965 for \$20,000.00 bearing interest
at the rate of 12% per annum in favour of your
client.

20 No On Demand Note for \$20,000.00 was ever
executed by me on the 30th July, 1964 in favour of
your client.

I shall be obliged if your client will supply
me with statement of account regarding the above
charge, and enclose herewith 50 cents in stamp.

Yours faithfully,

This is the Exhibit marked "N.S.6"
referred to in the Affidavit of
Ng Siew San sworn to before me
this 8th day of February 1972.

30 Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

In the High
Court

No. 3

Amended
Affidavit of
Ng Siew San

8th February
1972

(continued)

A STATEMENT AS REQUIRED UNDER
SECTION 20(2) OF THE MONEYLENDERS
ORDINANCE 1951

FIRST SCHEDULE
(Section 19)

Table 1. PRINCIPAL AND INTEREST

Principal	Date of loan	Rate per centum per annum of the amount of interest
₹30,000.00	30.7.1964	12%

Table 2. REPAYMENT

Amount Repaid	Date
₹10,000.00	6.2.1965

Table 3. AMOUNT OF ARREARS

Principal	Date Due	Interest	Date Due
₹20,000.00	On Demand. Demand made for payment within 7 days of 5.10.67.	₹1,860.00	Interest on ₹30,000/- at 12% from 30.7.64 to 5.2.65.
		₹6,400.00	Interest on ₹20,000/- at 12% from 6.2.65 to 5.10.67
		₹8,260.00	₹300/- paid on 11. 9.64 ₹300/- paid on 12.10.64 ₹600/- paid on 11.12.64 ₹300/- paid on 16. 1.65 ₹360/- paid on 16. 3.65
		<u>₹1,860.00</u>	
	Due	<u>₹6,400.00</u>	Interest contin- uing.

10

20

30

Table 4. SUMS NOT YET DUE

Principal	Date Due	Interest	Date Due
-	-	-	-

In the High Court

No. 3

Amended Affidavit of Ng Siew San

8th February 1972

(continued)

MENAKA w/o M. DEIVARAYAN
by her Attorney
Manickam Chettiar.

This is the Exhibit marked "N.S.7" referred to in the Affidavit of Ng Siew San sworn to before me this 8th day of February 1972.

10

Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

No. 4

AMENDED AFFIDAVIT OF NACHIAPPA CHETTIAR

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.59 OF 1971

BETWEEN

MENAKA wife of M. Deivarayan ... Applicant

And

NG SIEW SAN ... Respondent.

20

AMENDED AFFIDAVIT IN REPLY

I, N.AR.K. NACHIAPPA CHETTIAR son of Kasiviswanathan Chettiar of full age residing at No.30 Leboh Ampang, Kuala Lumpur affirm and say as follows:-

1. I am the Attorney of Menaka, wife of M. Deivarayan the Applicant herein. This Affidavit is sworn in reply to the Affidavit of Ng Siew San dated the 15th day of March 1971 (hereinafter

30

No. 4

Amended Affidavit of Nachiappa Chettiar

21st June 1971

In the High
Court

—
No. 4

Amended
Affidavit of
Nachiappa
Chettiar

21st June
1971

(continued)

referred to as the "said Affidavit") and pursuant to the Order of Court dated the 5th day of April, 1971.

2. I crave leave to refer to the said Affidavit:-

(a) I admit to the contents of paragraph 1 - 6 of the said Affidavit.

(b) Paragraph 7 of the said Affidavit is denied. The said Menaka wife of M. Deivarayan was at all material times the Managing Partner of AR.PR.M. Firm and the cheque and receipts in connection with the loan relating to this present claim to the Respondent were in the name of AR.PR.M. Firm; 10

(c) In answer to paragraph 8 of the said Affidavit the Applicant contends that the Respondent well knew at all material times that the Lender was AR.PR.M. Firm and that Menaka wife of M. Deivarayan was the Managing Partner of the said Firm;

(d) Paragraph 9 of the said Affidavit is denied; 20

(e) In answer to paragraph 10 of the said Affidavit the Applicant denies that business was carried under the name as alleged;

(f) Paragraph 11 of the said Affidavit is denied; the required particulars appear on the Memorandum;

(g) In answer to paragraph 12 of the said Affidavit the said sum of \$3,000.00 loaned to the Respondent was a completely separate and difference transaction which does not form any part of the Applicant's present claim. That loan has been settled in full; 30

(h) Paragraph 13 of the said Affidavit is denied; and the Applicant repeats paragraph (g) above;

(i) In answer to paragraph 14, the Applicant avers that the Respondent's letter dated 11.10.1967 was written in reply to the Applicant's Solicitors' letter dated 5.10.1967 in connection with a loan on an On Demand Note dated 30th July, 1964 and which loan had no 40

connection whatsoever with the present claim. In response to the Respondent's said letter a reply was given on the 17th day of October 1967 by the Applicant Solicitors enclosing the relevant statement of accounts relating to the said On Demand Note. The paper and writing now produced to me and marked "C" and "D" respectively are copies of the said letters from the Applicant's Solicitors dated 5th October 1967 and 17th October 1967. In exhibit "D" the heading was stated in error as "Charge Presentation No. 167/65 Volume 204 Folio 94" which heading was extracted from the Respondent's said letter of 11th October 1967. The error was rectified by the Applicant Solicitors by their letter dated 17th November 1967, a copy of which is now shown to me and marked "E". No request was at any time made by the Respondent for particulars in connection with the present claim.

(j) Paragraphs 15 and 15A are denied.

3. (a) On the 3rd of October 1970 the Applicant's Solicitors served on the Respondent a Chargee's Notice in respect of the present claim under Section 255 of the National Land Code.
- (b) On the 4th November 1970 the Respondent's then Solicitors, Messrs. Sulaiman Alias & Co., replied a copy of which is shown to me and marked "F".
- (c) On the 12th day of November 1970 the Applicant's Solicitors, replied to say that the Respondent's offer was not acceptable to the Applicant. The paper writing now shown to me and marked "G" is a copy of the said letter;
- (d) To the Applicant's Solicitors said letter of the 12th November 1970 the Respondent's Solicitors replied on the 26th November 1970. The paper writing now shown to me and marked "H" is a copy of the said reply from the Respondent's Solicitors. The said Exhibits clearly show that the Respondent did at all times admit his debt and promised to repay the same.

4. I am advised and verily believe that the Respondent is not entitled to the prayers contained

In the High Court

—
No. 4

Amended
Affidavit of
Nachiappa
Chettiar

21st June
1971

(continued)

In the High Court

No. 4

Amended Affidavit of Nachiappa Chettiar

21st June 1971

(continued)

paragraph 16 of the said Affidavit.

4.(a) Even if the Respondent is entitled to the prayers contained in paragraph 16 of his Affidavit, which is expressly denied by the Applicant, the Respondent, having received from the Applicant money not intended by the Applicant to be given to the Respondent gratuitously and the Respondent having enjoyed the benefit thereof is bound to restore the same to the Applicant.

5. I therefore pray that the Applicant's prayer be granted with costs.

10

AFFIRMED by the said N.AR.K.)
NACHIAPPA CHETTIAR son of)
Kasiviswanathan Chettiar) Sd. N.AR.K.Nachiappa
at Kuala Lumpur this 21st day) Chettiar
of June 1971 at 3.50 p.m.)

Before me,

Sd. M. Vallipuram
Commissioner for Oaths,
High Court, Kuala Lumpur.

20

I hereby certify that the above Affidavit was read, translated and explained in my presence to the deponent who seemed perfectly to understand it and declared to me that he did understand it and made his signature in my presence.

Sd. M. Vallipuram
Commissioner for Oaths,
High Court, Kuala Lumpur.

This Affidavit is filed by Messrs. Shearn, Delamore & Co., and Drew & Napier, solicitors for the Applicant herein whose address for service is No. 2, Benteng, Kuala Lumpur.

30

SD(K) 19776/1

5th October 1967

In the High Court

No. 4

Ng Siew San,
No. 446-7½ Mile Ulu Klang Road,
Ulu Klang,
Selangor.

A.R. REGISTERED.

Amended
Affidavit of
Nachiappa
Chettiar

21st June
1971

(continued)

Dear Sir,

Re: Menaka w/o M. Deivarayan

10

We have been instructed by our client Madam Manaka wife of M. Deivarayan to recover the sum of \$20,000.00 being the balance of amount due on an On Demand Note executed by you on the 30th day of July 1964 plus the sum of \$6,400.00 being arrears of interest up to 5th day of October 1967.

Our instructions are to institute legal proceedings to enforce payment of this debt unless settlement is made within seven (7) days of today's date.

20

We shall accordingly be obliged if in order to avoid this course you will make payment at our office within that period.

Yours faithfully,

c.c.
Madam Menaka,
w/o M. Deivarayan,
No. 30, Leboh Ampang,
Kuala Lumpur.

30

This is the Exhibit marked "C" referred to in the Affidavit of N.A.R.K. Nachiappa Chettiar sworn to before me this 21st day of June 1971.

Sd.
.....
Commissioner for Oaths,
High Court, Kuala Lumpur.

In the High Court

SD 19776/1 (k)

17th October, 1967.

No. 4

Amended Affidavit of Nachiappa Chettiar

Mr. Ng Siew San,
No.446 7½ Mile Ulu Klang Road,
Ulu Klang,
Selangor.

A.R. REGISTERED.

21st June 1971

Dear Sir,

(continued)

Charge Presentation No. 167/65
Volume 204 Folio 94

We acknowledge receipt of your letter of the 11th instant. In addition to the Charge referred to in your letter under reply, you had also executed a On Demand Note in favour of our client dated 30th July, 1964, a copy whereof is enclosed herewith.

10

As requested, we forward herewith a Statement of Accounts which please acknowledge receipt.

If settlement of our client's claim is not made within a further period of five (5) days from today's date, we will proceed with legal action.

20

Yours faithfully,

SC/.
c.c.
Madam Menaka,
w/o M. Deivarayan,
No.30, Leboh Ampang,
Kuala Lumpur.

This is the Exhibit marked "D" referred to in the Affidavit of N.AR.K. Nachiappa Chettiar sworn to before me this 21st day of June 1971.

30

Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

SD 19776/1 (K)

17th November, 1967.

In the High Court

No. 4

Mr. Ng Siew San,
No.446, 7½ Mile Ulu Klang Road,
Kuala Lumpur.

Amended
Affidavit of
Nachiappa
Chettiar

21st June
1971

(continued)

Dear Sir,

re: Menaka w/o M. Deivarayan

10 We refer to our letter of the 17th October,
1967 and the 15th instant which said letters carried
the wrong heading. They should carry the heading
quoted above.

Yours faithfully,

SC/.

c.c.
Madam Menaka
w/o M. Deivarayan,
No.30, Leboh Ampang,
Kuala Lumpur.

20 This is the Exhibit marked "E"
referred to in the Affidavit of
N.A.R.K. Nachiappa Chettiar sworn to
before me this 21st day of June 1971.

Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

SULAIMAN ALIAS & CO.,
Peguambela & Peguamchara
(Advocates & Solicitors)

30 Surat Tuan: SD(M) 19776/5
Surat Kami: KL/275/70. Tarikh 4th November 1970.

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

In the High Court

No. 4

Amended Affidavit of Nachiappa Chettiar

21st June 1971

(continued)

Dear Sirs,

Grant for Land Nos. 7695, 8243, 10624, 18012, C.T. Nos. 12866 and 12867 for Lot Nos. 125, 114, 114A, 327, 321 and 323 respectively in the Township of Tanjong Malim.

We have been handed your letter dated 3.10.1970 and its enclosure addressed to our client Mr. Ng Siew San of No.446, 7½ Mile, Ulu Klang Road, Kuala Lumpur, with instructions to reply thereto.

10

We have been instructed to inform you that our client has entered an Agreement with one Haji Mohamed bin Baginda Samah to sell 2 pieces of his lands in Ulu Bernam and our client expects to complete the sale on or before 31.1.1971.

We have been further instructed to inform you that our client will settle the amount due on the said Charge together with interest due thereon on or before 31.1.1971.

In the circumstances, we have been finally instructed to request you, which we hereby do, to advise your client to keep this matter in abeyance for the time being. We will revert to you as soon as the said Sale is completed.

20

Yours faithfully,

Sd. Sulaiman Alias & Co.

c.c.
Mr. Ng Siew San.

This is the Exhibit marked "F" referred to in the Affidavit of N.AR.K. Nachiappa Chettiar sworn to before me this 21st day of June 1971.

30

Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

KL/275/70
SD. 19776/5 (M)

In the High
Court

12th November, 1970

No. 4

M/s. Sulaiman Alias & Co.,
Bangunan Cho Tek,
135 Jln. Tunku Abdul Rahman,
Kuala Lumpur.

Amended
Affidavit of
Nachiappa
Chettiar

21st June
1971

(continued)

10 Tuan2 Grants for Land 7695, 8243, 10624,
18012, C.T.Nos. 12866 and 12867,
Township of Tg. Malim.

We refer to your letter dated the 4th November
1970 and would inform you that our client is not
agreeable to your proposal.

Yang benar,

K.

20 This is the Exhibit marked "G"
referred to in the Affidavit of
N.AR.K. Nachiappa Chettiar sworn to
before me this 21st day of June 1971.

Sd.
Commissioner for Oaths,
Kuala Lumpur.

SULAIMAN ALIAS & CO.,
Peguambela dan Peguamchara
(Advocates & Solicitors)

30 Surat Tuan SD. 19776/5 (M)
Surat Kami KL/275/70. Tarikh 26th November, 1970

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

Tuan2 Grants for Land 7695, 8243, 10624,
18012, C.T. Nos. 12866 and 12867,
Township of Tg. Malim.

We refer to your letter of 12th November, 1970.

40 We have been instructed to inform you that our
client will settle the out-standing debt due herein
and interest on or before 31.12.1970.

In the High Court

No. 4

Amended Affidavit of Nachiappa Chettiar

21st June 1971

(continued)

We hope your client will agree thereto.

May we hear from you.

Yang benar,

Sd. Sulaiman Alias & Co.

c.c.
Mr. Ng Siew San.

This is the Exhibit marked "H" referred to in the Affidavit of N.AR.K. Nachiappa Chettiar sworn to before me this 21st day of June 1971.

10

Sd.
Commissioner for Oaths,
High Court, Kuala Lumpur.

No. 5

Proceedings

No. 5

PROCEEDINGS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO. 59 OF 1971

Between

Menaka wife of M.Deivarayan ... Applicant 20

And

Ng Siew San ... Respondent

In Open Court 2nd March, 1972

NOTES OF EVIDENCE
BEFORE MOHD. AZMI J.

Mr. V.L. Kandan for Applicant.
Mr. M. Segaram for Respondent.

Attorney of Applicant Nachiappa Chettiar and Respondent present.

Mr. Kandan submits:

In the High
Court

—
No. 5

Proceedings

2nd March
1972

(continued)

Parties have agreed on claim and defence:-

- (1) that all documents in Applicant's bundle of documents are "agreed documents";
- (2) that all documents exhibited in Bundle of Pleadings are also agreed documents;
- (3) that for the purpose of this hearing, there are three issues -

10

(i) whether Applicant has complied with section 8(b) Moneylenders Ordinance 1951;

(ii) whether Applicant has complied with section 8(c) Moneylenders Ordinance 1951;

20

(iii) whether the terms set out in para 11(b) of Respondent's Affidavit sworn on 8.2.72 should have been included in the Note of Memorandum dated 11.1.1965. (Para 11(a) has been abandoned). If they are not in the Memorandum, what is the effect of such exclusion on said Note of Memorandum i.e. if they are not included, has the Applicant complied with section 16 of Moneylenders Ordinance?

The points which have been abandoned by Respondent are as follows:-

30

(i) Para 11(a) of Respondent's Affidavit. Therefore para 12 becomes irrelevant.

(ii) Para 13 of the said affidavit i.e. section 16.

(iii) Para 14 of the said affidavit i.e. non-compliance with section 19 of Moneylenders Ordinance.

(iv) Para 15 of Respondent's Affidavit i.e. section 18.

(v) Para 15A of Respondent's Affidavit. Parties have agreed to waive the

In the High
Court

No. 5

Proceedings

2nd March
1972

(continued)

irregularity as the requirement of section 21(1) of the Ordinance is procedural in nature.

NOTE:

For the purpose of this trial -

- (a) Nachiappa's affidavit dated 13.2.1971 shall be referred as "Applicant's Supporting Affidavit" - "ASA".
- (b) Respondent's amended affidavit dated 8.2.1972 shall be referred as "Respondent's Affidavit" - "RA".
- (c) The Amended Affidavit of Nachiappa Chettiar dated 21.6.1971 shall be referred to as "Applicant's Affidavit in Reply" - "AAIR".

10

Mr. Kandan submits the following facts are not in dispute:-

on 11.1.1965 pursuant to a Note of Memorandum of that date, Applicant lent and Respondent borrowed \$20,000/- with interest thereon at the rate of 12% per annum. (Pages 44 and 45 of Bundle of Pleadings "B/P" Exhibit "NS3").

20

By a Memorandum of charge of the same date (11.1.1965) (see pages 5 to 7 of B/P) made between Respondent the chargor and Applicant as the chargee, the Respondent secured six pieces of land belonging to him situated in the township of Tanjong Malim, Perak.

The said Note of Memorandum and the Charge were executed by one Manickam Chettiar s/o Somasundaram Chettiar, as the Attorney of the Applicant.

30

At all relevant times, the Applicant (Menaka wife of M. Deivarayan) was the holder of a licence issued under section 5 of Moneylenders Ordinance 1951 as a partner in and to carry on the business of money-lending under the name of "AR.PR.M.Firm" at No.30 Leboh Ampang, Kuala Lumpur.

At all relevant times, the said Manickam Chettiar was the holder of a separate licence

40

issued under section 5 of Moneylenders Ordinance to carry on as agent of AR.PR.M. Firm at the same address, under the authorised name of AR.PR.M. Firm.

In the High Court

—
No. 5

Proceedings

2nd March
1972

(continued)

10 The dispute is that the Applicant had not entered into this transaction in the authorised name of "AR.PR.M. Firm". There is no dispute as to the "Authorised place, only authorised name (see section 8(b) Moneylenders Ordinance). The transactions i.e. the Memorandum and the Charge dated 11.1.1965 were entered in the name of "Menaka wife of M. Deivarayan" instead of in the name of "AR.PR.M. Firm."

Refers to Memorandum under which the loan of ₹20,000/- was given at page 44 of B/P. The first interest at ₹200/- per month should have been paid on 11.2.1965 and subsequent interest on the 11th of each subsequent months. However, the first interest was only paid by Respondent on 16.3.1965.

20 On 28.8.1969 the Respondent also paid ₹400/- towards arrear of interest. No other payment has been made either towards interest or principal.

30 On 3.10.1971, as Respondent has not made any payments towards interest or principal, Applicant issued and served a notice under section 255 of the National Land Code demanding the return of ₹20,000/- payable on demand together with arrears of interest due as on that date. Upon the Respondent's failure to comply with the said notice, she took out the present Originating Summons on 17.2.1971 - the subject matter of the present action.

40 At no time between 11.1.1965 and 15.3.1971 (date of Respondent's original Affidavit), the Respondent raised any dispute as regards his liability to pay the principal and interest. Refers to Agreed Bundle of Documents ("ABD"). On page 1 - The loan of ₹20,000/- on 30.7.1964 has been settled. Altogether the Respondent had six loan transactions with the Applicant, and each of them were entered in the personal name of the Applicant instead of the authorised name. Out of the six loans, four had been settled. The present action is one of the two loans still outstanding. Thus, the question of illegality was never raised till 15.3.1971.

Refers to pages 9 to 13 of "ABD". As the

In the High
Court

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No. 5

Proceedings

2nd March
1972

(continued)

notice at page 9 had been waived as a result of negotiation, a fresh demand was made on 30.5.1969 (page 13 of "ABD"). On 11.9.1969 (see page 14 of "ABD") only four loans were then still outstanding - the relevant one is the third loan.

Refers to pages 20 to 26 of "ABD" - admission of Respondent's liability.

Pages 27 to 33 of "ABD" are now irrelevant in view of the abandonment of certain issues by Respondent as submitted earlier on.

10

Refers to page 34 of "ABD". The last document, a cheque dated 11.1.1965. Although the transaction was entered into by Applicant in her personal name, the money was given by "AR.PR.M. Firm" in the "authorised name". The other two documents at page 34 are receipts issued to Respondent in respect of the interest totalling ₹600/-. These receipts were issued by "AR.PR.M. Firm", and not by Applicant in her personal name.

All internal records of the Applicant were in the name of "AR.PR.M. Firm".

20

Mr. Segaram:

Confirms the points abandoned; the three issues to be decided; and the agreed facts of the case.

It is also admitted that Manickam Chettiar s/o Somasundaram Chettiar died in India about two years ago. He was both the agent of Applicant and the "AR.PR.M. Firm". Also concedes that the entire transaction was transacted and entered into by the said deceased.

30

COURT adjourned and resumed at 11.30 a.m.

No. 6

M. K. KASI CHETTIARMr. Kandan Calls:A.W.l M.K. Kasi Chettiar @ M.K. Kasiviswanathan
Chettiar affirmed, states in Tamil:

Age 62 years. Licensed Moneylender residing at No.87, Kg. Perak, Alor Star.

I have known the Applicant since her childhood.

10 I know AR.PR.M. Firm was formed in 1964. I was present when the terms of the partnership was discussed in 1963. The partners are the Applicant (Menaka) and one AL. Chockalingam. AL. Chockalingam is the brother-in-law of Menaka.

Menaka had $\frac{3}{4}$ share and Chockalingam $\frac{1}{4}$ share in the partnership. The agreement between them was that Menaka was to be responsible for the running of the Firm. She was to be the Managing Director.

I do not know whether there was any agreement under what name the business was to be transacted.

20 I know that Deivarayan, the Applicant's husband, provided for the capital share of Chockalingam.

Cross-examination by Mr. Segaram:

Deivarayan contributed the entire share of Chockalingam.

I do not know that Deivarayan took a Power of Attorney from Chockalingam.

Menaka's share was given by her father and not by Deivarayan.

Chockalingam's $\frac{1}{4}$ share was \$50,000/-. For Menaka's share, she also paid \$50,000/-.

I do not know whether the partnership agreement was put in writing.

I do not know whether Deivarayan was a money-

In the High Court

Applicant's Evidence

No. 6

M. K. Kasi Chettiar

Examination

Cross-Examination

In the High Court

Applicant's Evidence

No. 6

H. K. Kasi Chettiar

Cross-examination

(continued)

lender (Applicant's husband). I know he was a landed proprietor.

I know Chockalingam for a very long time and also his family in India.

Chockalingam was not in a position to pay \$50,000/- personally. He is not a resident of this country. I know he came to this country twice - may be in 1963 or 1964.

I do not know whether Chockalingam has repaid \$50,000/-. The contribution was to be repaid. Deivarayan gave the \$50,000/- in order to help his brother. Deivarayan and Chockalingam are brothers of same parents, but Deivarayan was given in adoption to another family. His father's name was changed as a result of the adoption.

10

No. 7

N.A.R.K. Nachiappa Chettiar Examination

No. 7

N.A.R. K. Nachiappa Chettiar

A.W. 2 N.A.R.K. Nachiappa Chettiar s/o Kasiviswanathan Chettiar affirmed, states in Tamil:

20

Age 51 years, residing at No.30 Leboh Ampang, Kuala Lumpur.

I am the agent of AR.PR.M. Firm by virtue of Power of Attorney - given by both partners. I produce the Power of Attorney given by Applicant. (Put in and marked Exhibit P1).

Originally Power of Attorney was given by Chockalingam to one Alagappa Chettiar. Then on 3.7.1969 I was substituted as Power of Attorney. (Put in and marked Exhibits P2 A & B).

30

I produce the certified copy of Business Registration of AR.PR.M. Firm. (Put in and marked Exhibit P3).

The Applicant (Menaka) is the Managing Partner of the Firm.

All transactions were done in the name of Menaka Deivarayan - the Applicant - because she owns $\frac{3}{4}$ share of the Firm. This was agreed upon

when the Firm was formed.

All my records are kept in the Firm's name viz. "AR.PR.M. Firm".

Cross-examination by Mr. Segaram:

All documents for transactions are in the name of Menaka Deivarayan - the Applicant. Court action is brought in her name. None of the documents contain the name of the two partners - Menaka and Chockalingam - because she is the Managing Partner.

10 Re-examination: Nil.

CASE FOR APPLICANT.

No. 8

Ng Siew San

Mr. Segaram calls:

R.W.1 Ng Siew San affirmed, states in Malay:

Age 78 years. Businessman residing at No.446, 7½ milestone Ulu Klang, Kuala Lumpur.

20 After executing the Note of Memorandum and the Charge, the cheque of \$20,000/- was given to my solicitors - at that time Shook Lin & Bck. I did see the cheque. I do not know the drawer of the cheque (cheque at page 34 of "ABD" shown to witness).

I was given only one document. It was red in colour. I know it was in connection with the loan. I did not receive any other document.

30 I only know of one Mr. Manickam. I do not know in whose name the transaction was to be carried out. I do not know that this transaction had to be carried out under a specified name.

I was given a copy of the Memorandum (page 44 of B/P identified), but not a copy of the Charge (page 5 of B/P).

It was only when I got the Summons, I came to know of the authorised name of "AR.PR.M. Firm."

In the High Court

—
No. 7

N.AR.K.
Nachiappa
Chettiar

Examination
(continued)

Cross-
examination

Respondent's
Evidence

—
No. 8

Ng Siew San
Examination

In the High
Court
—
Respondent's
Evidence

No. 8

Ng Siew San
Examination
(continued)

Cross-
examination

At first I transacted with Manickam. Later, when I received a notice, it was issued in the name of Menaka. Then when I got the Summons, I showed it to my solicitors. Then only I knew it was issued in the name of "AR.PR.M. Firm".

Cross-examination by Mr. Kandan:

I did receive receipts from whoever lent me the money. They look like those at page 34 of "ABD". I did not notice the receipts were issued in the name of AR.PR.M. Firm. I just kept the receipts.

10

When the loan transaction took place, I was in my solicitors office. Manickam Chettiar was present. Nobody mentioned the authorised name of "AR.PR.M. Firm". I do not know whether Manickam was aware of the Firm or not. My solicitors did not advise me as to the Firm.

I do not know it is an offence to lend money in the name other than the authorised name.

I knew Manickam Chettier in 1964 or 1965 when I wanted to borrow money. Since I knew him I had borrowed money from him at least on six occasions. I was on friendly terms with him. I agree he had been very indulgent to me in allowing me time to repay my loan.

20

I do not know whether Manickam knew or did not know the requirement to lend money in the authorised name.

The six loans that I took was between 1964 to 1968. The loan in this case was given in 1965, and it is one of the six loans. In fact it was the second loan I took from him. All these transactions were in the same name, namely Manickam and Menaka. At time of borrowing I only knew of Manickam.

30

Prior to my present solicitor, I had three solicitors - Shook Lin & Bok; Sulaiman Alias & Co., and then Nair & Nair.

I agree that I borrowed the money and still owing \$20,000/- principal and interest, but I refuse to pay because there is violation of legislation. I was not aware of the violation until I

40

filed my Affidavit.

COURT adjourned to 2.30 p.m.

Hearing resumed.

Mr. Kandan submits that it has now been agreed by both parties that the Applicant and Manickam Chettiar, and the Respondent were not aware of the provisions of the law requiring that the transaction be made under the authorised name and that this fact was not known to either side until the commencement of these proceedings.

10

Mr. Segaram confirms.

Mr. Kandan does not wish to cross-examine R.W.1.

Examination by Mr. Segaram: Nil.

CASE FOR RESPONDENT.

No. 9

Proceedings

Mr. Segaram submits:

(1) The fact of ignorance of the law is relevant only in respect of restoration of benefit under sections 66 and 71 Contracts Ordinance. But it is not relevant to the interpretation of the Moneylenders Ordinance No. 42 of 1951.

20

(2) Written submission produced.

(3) The three issues raised by Respondent.

(4) Section 8(c) Moneylenders Ordinance - two limbs - agreement and security.

Refers to sections 5(1) and (2) and section 6.

In this case the authorised name is "AR.PR.M. Firm".

30

Example of Gazette G.N.1297/8.4.1965 - see page 661 in respect of Manickam Chettiar.

In the High Court

Respondent's Evidence

No. 8

Ng Siew San

Cross-examination

(continued)

No. 9

Proceedings

2nd March

1972

In the High
Court

No. 9
Proceedings
2nd March
1972
(continued)

Section 2 Definition of "Firm". Manickam is an agent of both the partners.

Refers to page 42 B/P. Form 'B' which is provided under Moneylenders (Amendment) Rules, 1953 L.N. 627/1953 - Rule 5.

The present action has been brought in Menaka Deivarayan's name only. It should have been filed in the name of the Firm. In every transaction both partners and the Firm must appear. Apart from the two receipts, there is no mention of "AR.PR.M. Firm" which is the authorised name. Even in the correspondence, it was not done in the author sed name.

10

Cites Merz v. South Wales Equitable Money Society, Limited (1927) 2 K.B. 366 @ 371 - "registered name" is equivalent to "authorised name".

The Memorandum at page 44 of B/P should disclose name of both the partners as lenders together with the authorised name. Name of lender should read "Menaka Deivarayan, AL. Chockalingam of "AR.PR.M. Firm". So is the charge at page 5 of B/P.

20

English cases on section 8(c):-

- (a) Vorst v. Goldstein & ors. (1924) A.E.R. 418. (1924) 2 K.B. 372 - facts similar to the present case.

Menaka viz. Applicant's Licence was applied for on 29.6.1964 (see page 40 of B/P) and licence was issued to her for period 1.7.1964 to 30.6.1965.

30

Section 5(3) - "A licence taken out by a person as a partner in a firm shall be deemed to be a licence to the firm"

- (b) Chapman v. Michaelson (1908) 2 CH. 612 - affirmed on appeal (1909) 1 Ch. 238.

Our section 8(c) of our Ordinance is parimateria with English 1900 Act except the word "registered name" is used instead of "authorised name". - See page 346 -

40

The Law Relating to Moneylending by Meston 4th Edition. The present English Money-lending Act uses the word "authorised name". The definition is the same.

In the High Court

—
No. 9

Proceedings
2nd March
1972

(continued)

(c) Robinson Clarkson v. Robinson (1910) 2 Ch. 571.

(d) Stirling v. John (1923) 1 K.B. 557.

The security must be taken in the registered name.

10 (e) Chai Sau Yin v. Kok Seng Fatt (1966)
2 M.L.J. 54 @ 56 second para left column
and at para 58 para D left hand column.
In this case all three documents were
annexed together. Facts are different.

All those show the authorised name must appear.
It is mandatory.

As regards knowledge on part of borrower:-

20 (a) Kent Trust Limited v. Cohen (1946) 1 K.B.
584; (1946) 2 A.E.R. 575. - It is no
answer to say that the borrower knew
exactly what the terms of the contract were.

(b) RE: A Debtor (1938) 2 A.E.R. 759.

(c) Allighan & Anor. v. London & Westminster
Loan & Discount Co. Ltd. (1940) 2 K.B.
630 @ 634.

Construction of section 8(c):-

(a) Kuala Lumpur High Court Civil Appeal No. 7
of 1971 - Hamid J.

30 (b) Quebec Railway, Light, Heat & Power Co.
Ltd. v. Vandry & Ors. (1920) A.I.R. P.C.181
@ 186.

(c) Stirling v. John (1923) 1 K.B. 557.

(d) Ang Khye Pang v. Chop Ban Aik (1939)
M.L.J. 283 @ 285.

(e) Gulwant Singh v. Abdul Khalik (1965)
2 M.L.J. 55 @ 58.

In the High
Court

No. 9
Proceedings
2nd March
1972
(continued)

(f) Peizer v. Lefkowitz & Ors. (1912) 2 K.B.
235 - section 8(b).

This decision has no application in
section 8(c).

Purpose of section 8(c) -

Merz. v. South Wales Equitable Money Society,
Limited.

Effect of contravention of section 8(c) -

Three cases cited.

(5) Section 8(b) -

10

One transaction is sufficient.

(a) Cornelius v. Phillips (1916 - 17) A.E.R.
685.

In this case the fact that the two
receipts are issued is not decisive. All
the correspondence never mention the
authorised name.

(b) Peizer v. Lefkowitz & Ors.

(6) Third Issue -

Para 11(b) of Respondent's affidavit.
(See page 36 of B/P).

20

Burden of Proof -

(a) Arjan Singh vs. Hashim Angullia (1941)
M.L.J. 196.

(b) (1959) M.L.J. 248.

(c) (1971) 2 M.L.J.

(d) (1931) 2 K.B.579; (1931) A.E.R. 720.

Refers to terms in the Charge dated 11.7.1965.

Muthiah Chettiar v. Jagat Singh (1962) M.L.J.
232.

30

Any onerous terms in the security (i.e. the
Charge) must be included in the Memorandum.

In this case the Respondent only received the Memorandum but not the Charge - see evidence of Respondent in Court. Refers to Memorandum at page 44 of Bundle of Documents. There is no evidence Applicant has given a copy of the Charge to Respondent.

In the High
Court

—
No. 9

Proceedings

2nd March
1972

(continued)

Cites Kehar Singh v. Karuppiyah (1964) M.L.J. 249 @ 251.

(1965) 1 M.L.J. 56.

10 Respondent has not been cross-examined on the question that he was not given a copy of the Charge.

Edgware Trust Ltd. v. Lawrence (1961) 3 A.E.R. 141.

The burden of proving that a copy of the Charge has been given to the borrower is on the moneylender. If Charge is not given, it cannot be read together with the Memorandum.

20 The Charge contained additional terms. Section 16 has not been complied. Burden of proof is on the lender.

Admission of liability by Respondent.

Such admission or estoppel does not apply to Moneylenders Ordinance.

Kok Hoong v. Leong Cheong Kweng Mines Ltd. (1964) M.L.J. 49 P.C. @ 55.

If the contract is unenforceable, the lender cannot get anything back.

Kasumu & Ors. v. Baba-Eqbe (1956) 3 A.E.R. 266 P.C.

30 Sundralingam v. Ramanathan Chettiar (1967) 2 M.L.J. 211 F.C. @ 213 last para right hand column.

Whether Applicant can recover under section 66 or section 71 Contract Ordinance.

Section 66 has no application. The contract is illegal and has been carried out.

In the High Court

No. 9

Proceedings

2nd March 1972

(continued)

Indian case are conflicting, but cotes Govind Singh v. Vali Mohammad A.I.R. (1951) Hyderabad 44.

Section 71 also has no application - right to compensation.

(a) Siow Wong Fatt v. Susur Rotan Mining Ltd. & Anor. (1967) 2 M.L.J. 118 P.C.

Four conditions must be satisfied.

(b) Chai Sau Yin v. Liew Kwee Sam (1962) M.L.J. 152.

10

In this case, illegality has been committed, Illegal contract is same as unenforceable contract: Kasumu & Ors. v. Baba-Eqbe (1956) 2 A.E.R. 266 @ 271 second para and at page 270 top para.

Principal of equity: Mohori Bibee & Anor. v. Dhurmodas Ghose 30 Indian Appeals 114 P.C.

There is no question of restitution.

Application should be dismissed and Respondent's counterclaims should be granted. (see page 38 of B/P). If Applicant's claim fails, those ancillary reliefs should be granted to Respondent.

20

TIME: 5.15 p.m.

COURT adjourned to 16.3.1972 at 10 a.m.

16th March 1972

16th March, 1972.

Both counsel appear in Chambers.

Mr. Segaram for Respondent applies to withdraw the admission made on 2.3.1972 regarding the parties being not aware of the illegality of the contract under the Moneylenders Ordinance when it was entered into and as regards the illegality being discovered until the commencement of the present action. The admission was made without proper instruction. (See admissions made at page 273 Civil Notebook No. 5).

30

Mr. Kandan has no objection.

COURT:In the High
Court

No. 9

Proceedings

2nd March
1972

(continued)

As I find from the circumstances and the evidence adduced that the parties were not in fact aware of the provisions of section 8 Moneylenders Ordinance or that the contract was illegal when it was entered into, and that they only discovered the illegality when the present proceedings were commenced, I allow Mr. Segaram's application.

In Open Court.

10 Both Counsel present.

Parties present.

Mr. Kandan submits written submission and states:-

1. As the Respondent is now not relying on non-compliance with section 16 of the Moneylenders Ordinance, the issue before the Court is whether the Applicant can recover the money under section 66 of the Contracts (Malay States) Ordinance 1950 i.e. obligation of person who has received advantage under void agreement or contract that becomes void.
- 20
2. Refers to Respondent's written submission.
- (i) Paras 1 to 4 only introductory.
- (ii) pages 2 to 15 - relates to non-compliance with section 8(b) and (c) of Moneylenders Ordinance. This is not material as the Applicant concedes section 8(b) and (c) have not been complied with for this particular transaction.
- (iii) pages 15 to 21- can be ignored as Respondent has abandoned reliance on section 16 as a Defence.
- 30
- (iv) pages 21 - 24 relate to estoppel. It is relevant only to the extent that the Respondent admitted liability to the amount claimed but refused to pay because of the non-compliance with section 8(b) and (c) of Moneylenders Ordinance.

In the High
Court

—
No. 9

Proceedings

2nd March
1972

(continued)

(v) pages 24 - 28 relate to Respondent's resistance to the Applicant's claim under section 66 Contracts Ordinance. This part is the only relevant one.

3. Refers to his own written submission:-

Para 2.1 - relevant.

Paras 3.1 to 4.3 - no longer important as Section 16 has been abandoned by Respondent.

If it is contended that section 66 does not apply to executed contract as opposed to executory contract; or that section 66 cannot apply to contracts under Moneylenders Ordinance as the provisions of section 8 are mandatory. 10

The answer is from para 4.4.

Refers to section 8 - It is a penal provision. Whereas section 16 is a mandatory provision.

Non-compliance with section 8 does not make the contract unenforceable but makes it void for illegality. Notwithstanding violation of section 24 Contracts Ordinance, section 66 is still applicable. 20

Cites Ahmad Bin Udoh's case (1969) 2 M.L.J. 116 F.C.

In the present case both parties were not aware of the illegality when they entered into the contract. They were ignorant of the illegality just as in the above case. Section 3 of the Padi Cultivators Ordinance is similar to section 8 Moneylenders Ordinance. Both are penal provisions. Contracts Ordinance 1950. Padi Cultivators Ordinance 1955; the Moneylenders Ordinance 1951 i.e. both are subsequent to Contracts Ordinance. 30

Cites Ahmad Bin Udoh's case (1969) 2 M.L.J. 116 (reads head-notes). The Federal Court did not touch on the question of executed or executory contract. It does not say section 66 only applies to executory contract. Refers to Suffian F.J. Judgment at page 84 (1969) 2 M.L.J. - He quoted the Indian case which dealt with executed contract. 40

TIME 1.55 p.m.

COURT adjourned to 2.30 p.m.

Hearing resumed.

Mr. Kandan continues:

The Respondent has abandoned section 16 because he now agrees he received the Memorandum of Charge and Note of Memorandum under section 16 together when he received the loan.

(Mr. Segaram agrees).

In the High
Court

—
No. 9

Proceedings

2nd March
1972

(continued)

10 Section 66 applies both to executed and
executory contract. Cites Dutt on Contract 4th
Edition page 51 para 16. The Lender has lent and
the borrower has not repaid the money. This is
similar to a case of person selling goods and the
purchaser has not paid for them - see case cited by
Suffian F.J. in Ahmad bin Udoh's case. The Federal
Court decision is binding but not the High Court
decision of Wan Suleiman J. Refers to page 117 of
Wan Suleiman's reasonings which were based on
20 English case of Snell v. Unity Finance, Ltd. (1963)
3 A.E.R. 50. He followed English decisions.
There is a distinction between English Law and our
law (which is based on Indian law). Under English
law, the party who neglects can only recover if
the contract is executory.

30 Refers to Pollock & Mulla on Indian Contract
& Specific Relief Acts 8th Edition pages 391-392.
This view has been criticised in Budhulal v. Deccan
Banking Co. referred to by Azmi L.P. at pages 83
and 84.

Section 66 of our Contract Act is in pari
material with section 65 of Indian Contract Act.

The fact that in the present case the
illegality is in respect of Moneylenders Ordinance
is immaterial because the Federal Court has
decided on Padi Cultivators (Control of Rent &
Security of Tenure) Ordinance 1965. Both ordin-
ances are to protect public interest. There is
no distinction in principle.

40 If the Defence is in section 16, the Applicant

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Court

—
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Proceedings

2nd March
1972

(continued)

has no leg to stand on as the contract is unenforceable. This is equivalent to section 19 of the Indian Contract Act: Kasumu's case (1956) 3 A.E.R. 266.

Cites Chai Sau Yin v. Liew Kwee Sam (1962) M.L.J. 152 @ 153 para H left column. But in that case section 66 was not argued.

Page 5 of written submission:-

Para 4.12 - Harnath Kaur v. Inder Bahador Singh 50 I.A. 69 P.C. 76. Even if the contract is illegal and void and section 66 applies, interest at 6% is also recoverable. 10

Para 4.13 - In all the three cases the parties knew of the illegality from the beginning.

Case (a) - head-note (c).

Case (c) - head-note (b).

Para 4.14 -

Case (a) - section 65 held not applicable because Plaintiff knew of illegality.

Case (b) - English cases do not apply when our section 66 is invoked. English cases are based on equitable principle. 20

Case (c) - section 66 was not taken up.

Case (d) - it has no application as it was statutorily an unenforceable contract.

Case (e) - The Plaintiff knew of illegality. He had no money-lenders licence which is not the case under consideration. 30

Limitation.

As regard limitation (at page 28 of Respondent's written submission) this has not been pleaded. Reads section 4 Limitation Ordinance,

1953, read: together with Order 19 Rule 15 Rules of Supreme Court (page 253 Mallal's Supreme Court Practice). Page 254 under "Limitation" - it must be specifically pleaded. K. Kaliammal v. R.G. Manickam (1952) M.L.J. 162.

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Proceedings

2nd March 1972

(continued)

Further, even if Limitation applies, section 26(2) applies and time started to run from the first date of denial - i.e. when action was instituted. Section 21(1) the period of limitation is 12 years.

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Annada Mohan Roy's case L.R. 50 I.A. 239 @ 241 @ 244 - Cause of action arises when the illegality is discovered or on the date of first denial, whichever is the earlier. In that case the plaintiff was trying to hide the fact of illegality. This is the special circumstance.

Hansraj Gupta & Ors. v. Official Liquidators of Dehra Dun-Mussoorie Electric Tramway Co. Ltd. L.R. 60 I.A. 13 - It was held on special circumstances existed.

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Applicant's claim should be allowed either with interest at 12% or interest at 6%.

COURT:

C.A.V.

Sd: Mohd. Azmi.

JUDGE
HIGH COURT
KUALA LUMPUR.

No. 10

No.10

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JUDGMENT

Judgment

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

12th
August
1972

ORIGINATING SUMMONS NO.59 OF 1971

Between

Menaka wife of
M. Deivarayan

...

Applicant

In the High
Court

And

Ng Siew San

...

Respondent

No.10

JUDGMENT OF MOHD. AZMI J.

Judgment

12th August
1972

(continued)

By a charge Presentation No.167/65, Volume 204, Folio 94, dated January 11, 1965, the respondent charged to the applicant six pieces of land in the Township of Tanjong Malim totalling an acre of 3 roods 25.52 poles as security for a loan of \$20,000/- with interest at 12% per annum. The respondent covenanted with the applicant as chargee, inter alia, to repay the principal sum of \$20,000/- on demand, and to pay the agreed interest by equal monthly payment of \$200/- on the eleventh day of every month, the first of such payment to be made on February 11, 1965. By August 28, 1969 the respondent had only made two payments towards interest totalling \$600/-. On October 3, 1970, the applicant caused a notice in Form 16E to be served on the respondent under section 255 of the National Land Code. The respondent having failed to pay the principal sum and interest due within one month of the service of the notice, the applicant applies by Originating Summons for an order to sell the six parcels of land by public auction to satisfy the principal sum of \$20,000/- with interest thereon at the rate of 12% per annum from April 11, 1965 to date of payment and costs. The respondent opposes the application contending that the claim is illegal and void and/or unenforceable on the grounds that the applicant has contravened the provisions of sections 8, 16, 18, 19, and 21 of the Moneylenders Ordinance No.42 of 1951. He also counterclaims for an Order that the contract of loan and the charge dated January 11, 1965 executed by him in favour of the applicant be declared illegal and void and/or unenforceable and for other ancillary reliefs. By his Affidavit in Reply, the applicant contends that, even if the respondent succeeds in his counterclaim, the respondent having received from the applicant \$20,000/- not intended to be given gratuitously and that the respondent having enjoyed the benefit thereof, is bound to restore the same to the applicant.

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By consent of both parties, it was ordered by Abdul Hamid J. that the foreclosure proceedings be

continued as if the action had been commenced by writ of summons. In consequence whereof, for the purpose of the present proceedings, the affidavit in support of the Originating Summons sworn on February 13, 1971 by N.A.R.K. Nachiappa Chettiar, an Attorney of the applicant, is treated as a Statement of Claim, and the amended affidavit of the respondent affirmed on February 8, 1972 as a Defence and Counter-claim; whilst the Affidavit in Reply of N.A.R.K. Nachiappa Chettiar sworn on June 21, 1971 stands as a Reply and a Defence to respondent's counterclaim.

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No.10
Judgment
12th August 1972
(continued)

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At the outset of the hearing, the respondent abandoned his defence set up under sections 16, 18, 19 and 21(1) of the Moneylenders Ordinance as contained in paragraphs 11(a), 13, 14, 15 and 15A of the Statement of Defence. As far as the applicant's claim is concerned, it is also agreed by both parties that there are only three issues which require determination by the Court, namely:-

- (i) whether the applicant has complied with section 8(b) of the Moneylenders Ordinance;
- (ii) whether the applicant has complied with section 8(c) of the said Ordinance; and
- (iii) whether the two contractual terms in the Charge as pleaded in paragraph 11(b) of the Statement of Defence, should have been included in the Memorandum of Loan, and, if they are not so included, whether such omission would amount to non-compliance with the provisions of section 16(3) of the Moneylenders Ordinance.

As regards issues (i) and (ii), the relevant part of section 8 of the Moneylenders Ordinance, 1951 provides:

"If any person -

- (a)
- (b) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, carries on

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Court

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No.10

Judgment

12th August
1972

(continued)

business as such in any name other than his authorized name or at any other place than his authorized address or addresses; or

- (c) in the course of business as a money-lender enters as principal or agent into any agreement with respect to any advance or repayment of money or takes any security for money otherwise than in his authorized name,

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he shall be guilty of an offence under this ordinance and shall be liable to a fine not exceeding one thousand dollars and for a second or subsequent offence shall be liable to the fine aforesaid or to imprisonment for a term not exceeding twelve months and an offender being a company shall for a second or subsequent offence be liable to a fine not exceeding five thousand dollars.

In this case the following facts are not in dispute. At all relevant times, the applicant and one AL. Chockalingam are licensed as partners to carry on business as moneylenders under the authorised name of "AR.PR.M. Firm" and at the authorised address of No.30 Leboh Ampang, Kuala Lumpur. On January 11, 1965 pursuant to a note of memorandum of loan of that date, the applicant lent to the respondent a sum of \$20,000/- with interest thereon at the rate of 12% per annum. By a memorandum of charge of the same date, the respondent charged his six pieces of land to the applicant as security for the said loan. Both the memorandum of loan and the charge executed by one Manickam Chettiar as the attorney of the applicant. At all relevant times, Manickam Chettiar was licensed to carry on business of moneylending as an agent of AR.PR.M. Firm under the authorised name of that firm. Thus, by executing the note of memorandum and the Memorandum of charge otherwise than in the authorised name of "AR.PR.M. Firm", Manickam Chettiar has contravened the penal provisions of sections 8(b) and 8(c) of the Ordinance. Similarly, since the applicant has entered into the loan transaction and the charge in her name personally instead of in the authorised name of "AR.PR.M. Firm", she has also contravened both the said penal provisions. In his oral submission, learned counsel for the

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applicant has now conceded that sections 8(b) and 8(c) have not been complied with. Under the circumstances, the secured on demand loan in this case is illegal and void, and the applicant is liable to the penalty imposed under section 8.

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12th August
1972

(continued)

10 With regard to issue (iii), it is clear from the exhibit that the note of memorandum under section 16 does not contain the third and fourth contractual terms found in the memorandum of charge. Under the third term, the respondent undertakes that he will not transfer, sell, charge or otherwise deal with the said land without the written consent of the applicant/chargee has first been obtained, and under the fourth term, it is provided that the applicant/chargee shall have the custody or possession of the issue document of title of loan charged. In this case, the respondent testifies that he was only supplied with a copy of the note of memorandum but not with a copy of the memorandum of charge. However, learned counsel for the respondent has now agreed that the memorandum of charge appeared to have been received by the respondent. The respondent was represented by a solicitor during the whole transaction. If he had been supplied with a copy of the note of memorandum, I find it very unlikely on the balance of probabilities that his solicitor would not ensure that he was also given a copy of the charge. I am therefore satisfied that the respondent was in fact supplied with the stamped copy of the charge as well as the stamped copy of the note of memorandum; and, as such, on the authority of Kehar Singh v. Karuppiah (1) and Reading Trust, Limited v. Spero (2) both memoranda can be read together so as to constitute sufficient compliance with the provision of section 16(3). Under the circumstances, the omission to incorporate the two onerous terms in the charge is not, therefore, fatal.

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On the relief sought by the applicant in her Reply to the respondent's counterclaim, the question to be determined is whether the applicant is entitled to the restoration of her money still due from the respondent under the provision of

(1) (1964) M.L.J. 249.

(2) (1930) 1 K.B. 492.

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1972

(continued)

section 66 of the Contracts (Malay States) Ordinance 1950 by virtue of the moneylending transactions being void for illegality under sections 8(b) and 8(c) of the Moneylenders Ordinance. In other words, ought the Court grant the declaration and ancillary reliefs to the respondent by putting him on terms? Section 66 provides:

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

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Before dealing with the applicability of section 66 to the present case, it is necessary to consider the effect of violating the penal provisions of sections 8(b) and 8(c) on a money-lending transaction. Learned counsel for the applicant contends that the effect of such violation renders the transaction illegal and void but not unenforceable. It is argued that there is a difference between provisions in the Moneylenders Ordinance which expressly make a contract unenforceable in case of non-compliance and those which are silent as regards unenforceability. Thus, unlike, for example, sections 16 and 18, the provision of section 8 does not expressly state that a contract or security is unenforceable if a person being licensed as a moneylender carries on such business in any name other than his authorised name, or if he enters into any agreement with respect to any advance or repayment of money, or takes any security for money otherwise than in his authorised name. In my judgment, there is some force in this argument, and I am inclined to the view that non-compliance with either section 8(b) or 8(c) renders a moneylending transaction illegal and void, but it does not make the transaction statutorily unenforceable. It is contended that the distinction is important in that where an agreement or a contract is unenforceable by statute, the remedy under section 66 of the Contract Ordinance will not be available.

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To my mind, the real issue to be decided is not so much whether or not the transaction is statutorily unenforceable, but whether it is void ab initio by reason of illegality under sections

8(b) and 8(c). This depends on whether at the time of making the agreement the parties were ignorant that they were executing an illegal transaction. If they were ignorant, then, in my view, section 66 of the Contracts (Malay States) Ordinance would apply. (See Ahmad Bin Udoh & Anor. v. Ng Aik Chong(3) As was stated by their Lordships of the Privy Council in Harnath Kaur v. Inder Bahador Singh(4):

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(continued)

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"An agreement, therefore, discovered to be void is one discovered to be not enforceable by law, and, on the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void."

The circumstances of the present case are well summarised by the following evidence of the respondent:

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"I agree that I borrowed the money and still owing \$20,000/- principal and interest, but I refuse to pay because there is violation of legislation. I was not aware of the violation until I filed my affidavit."

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From the evidence in this case, it is beyond dispute that the fact of non-compliance with sections 8(b) and 8(c) was only discovered by both parties when the Statement of Defence dated February 8, 1972 was filed. This is supported by the offer made by Sulaman Alias & Co., who at one stage acted as solicitors for the respondent to settle the debt and interest by a certain date as contained in their letters dated November 4, 1970 and November 26, 1970 and the refusal of the applicant to accept the offer. It is my finding in this case that at all relevant times both parties had no knowledge of the illegality until the Statement of Defence was filed. Nor is there evidence on which such knowledge can be imputed on either of them. The cheque of \$20,000/- was issued in the authorised name of AR.PR.M. Firm and so were the two receipts of \$600/- issued to the respondent in respect of payments made towards interest. It

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(3) (1970) 1 M.L.J. 82 F.C.

(4) 50 I.A. 69.

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1972

(continued)

would also appear that this is not the first time that the respondent had borrowed money from the firm. From the evidence, it is reasonable to infer that the respondent knew all along that the loan was given by AR.PR.M. Firm and that the applicant were merely acting as Managing Partner of the firm. It is only years later that the transaction was discovered to have been entered in the wrong name. On the evidence, I find this case comes within the first limb of section 66, i.e. the agreement "is discovered to be void". This is not a case where the consideration or object of the agreement is illegal and void for that reason. Nor is the agreement tainted with fraud or other moral turpitude as for instance happened in the case of Snell v. Unity Finance, Ltd.⁽⁵⁾ where the Plaintiff/hire-purchaser in order to avoid the requirement of a minimum deposit by the Hire-Purchase and Credit Sale Agreements (Control) Order, 1960 stated in the agreement the cash price of the car as £210 and the deposit as £50 instead of the true amounts of £185 and \$25, which last sum was less than the minimum deposit required by the Order. The Court of Appeal refused to enforce the hire-purchase agreement.

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In Ahmad bin Udoh's case, Suffian F.J. quoted with approval the following passage from the judgment of Chandra Reddy C.J. in Kanuri Sivaramakrishnaiah v. Vemuri Venkata Narabari Rao⁽⁶⁾ on the question of section 65 of the Indian Contract Act (corresponding to our section 66) relating to an executed contract:

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"It is manifest that in order to invoke this section, the invalidity of the contract or agreement should be discovered subsequent to the making of it. This cannot be taken advantage of by parties who knew from the beginning the illegality thereof. It only applies to a case where one of the parties enters into an agreement under the belief that it was a legal agreement, i.e. without the knowledge that the agreement is forbidden by law or opposed to public policy and as such illegal.

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(5) (1963) 3 A.E.R. 50

(6) A.I.R. (1960) Andh. Pra. 186

The effect of section 65 is that, in such a situation, it enables a person not in pari delicto to claim restoration since it is not based on an illegal contract but dissociated from it. That is permissible by reason of the section because the action is not founded on dealings which are contaminated by illegality. The party is only seeking to be restored to the status quo ante."

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Court

—
No.10

Judgment

12th August
1972

(continued)

10 Learned counsel for the respondent relied on
the case of Kasumu & Ors. v. Baba-Egbe(7) and
Govind Singh v. Vali Mohammad(8) for the proposi-
tion that section 66 of the Contracts Ordinance
cannot apply to Moneylenders Ordinance. As
regards Kasumu's case, I do not think that is what
Their Lordships of the Privy Council decided in
that case. There it was found that the money-
lender had contravened section 19 of the Nigerian
Moneylenders Ordinance which imposes a duty on a
20 moneylender to keep proper account books - which
is similar to our section 18. As stated earlier
on, our Section 18 of the Moneylenders Ordinance
expressly makes a contract unenforceable if it is
not complied with. But in the instant case, we
are not dealing with section 18; and in any event,
the effect of section 66 of our Contracts Ordinance
was not argued before the Privy Council in that
case. With regard to the case of Govind Singh v.
30 Vali Mohammad, the moneylender there knew that he
was entering into an illegal contract and, as such,
it was rightly held that section 65 of the Indian
Contract Act could not apply.

As both parties in this case were not aware
and genuinely ignorant of the illegality at the
time of making the loan transaction, the applicant
is entitled to relief under section 66. Under the
circumstances of the present case, I do not think
it is reasonable that the respondent who has had
the benefit and advantage of using \$20,000/- of
the applicant's money and who is now relying on
the illegality of the loan transaction and counter-
claiming, inter alia, for the return and
cancellation of the note of memorandum and the

(7) (1956) 3 A.E.R. 266 P.C.

(8) A.I.R. (1951) Hyderabad 44.

In the High
Court

No.10

Judgment

12th August
1972

(continued)

memorandum of charge, should have reliefs, notwithstanding such illegality, without being put on terms by which both parties may be restored to the positions they occupied before the transaction commenced. For the same reason, the applicant should not also be allowed to keep the ₹600/- paid to her as interest.

I would therefore make the following orders:-

- (1) the applicant's claim for an order of foreclosure of the respondent's six parcels of land is dismissed; 10
- (2) upon payment of the sum of ₹19,400/- by the respondent to the applicant within two months from today -
 - (i) it is declared that the contract of loan dated January 11, 1965 entered into between the respondent and the applicant and the Charge Presentation No. 165/65 Volume 204 Folio 94 dated January 11, 1965 executed by the respondent in favour of the applicant is illegal and void; and 20
 - (ii) it is ordered that -
 - (a) the Registrar of Title do cancel the Memorials appearing on the Issue Document of Title and on the Register of Documents of Title to lands charged by the respondent in favour of the applicant as security for loan dated January 11, 1965;
 - (b) the chargee/applicant do deliver up the Note or Memorandum for cancellation; 30
 - (c) the chargee/applicant do within fourteen days from the date of payment deliver to the chargor/respondent or his solicitors the duplicate copy of the Memorandum of the Charge and issue documents of title relating to the aforesaid lands;
 - (d) the chargee/applicant do within fourteen days from the date of 40

payment execute a good and valid registrable Memorandum of Discharge, discharging the Charge Presentation No. 167/65 Volume 204, Folio 94 dated January 11, 1965 and deliver the same to the chargor/respondent or his solicitors; and that failing the same, the senior Assistant Registrar, High Court, Kuala Lumpur, be empowered to execute the said Memorandum of Discharge for and on behalf of the said chargee/applicant;

In the High Court
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No.10
Judgment
12th August
1972
(continued)

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(3) there will be no order as to costs.

Sd: Mohd. Azmi.
JUDGE
HIGH COURT,
KUALA LUMPUR.

Kuala Lumpur,
August 12, 1972.

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Mr. V. L. Kandan of M/s. Shearn, Delamore & Co. for applicant.

Mr. M. Segaram of M/s. M. Segaram & Co., for respondent.

No. 11

No.11

ORDER

Order
12th August
1972

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.59 OF 1971

Between

Menaka wife of M. Deivarayan ... Applicant

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And

Ng Siew San ... Respondent

BEFORE THE HONOURABLE MR. JUSTICE MOHD. AZMI
THIS 12TH DAY OF AUGUST, 1972

IN OPEN COURT

In the High
Court

O R D E R

—
No.11
Order
12th August
1972
(continued)

The Originating Summons dated the 17th day of February, 1971 coming up for hearing on the 2nd day of March, 1972 and on the 16th day of March, 1972 in the presence of Mr. Letchumi Kandan of Counsel for the Applicant and Mr. M. Segaram of Counsel for the Respondent AND UPON READING the said Originating Summons dated the 17th day of February, 1971, the Affidavit of N.A.R.K. Nachiappa Chettiar son of Kasiviswanathan Chettiar affirmed on the 13th day of February, 1971, the Affidavit of Ng Siew San affirmed on the 10th day of March, 1971 and on the 15th day of March, 1971 respectively, the Affidavit in Reply of N.A.R.K. Nachiappa Chettiar son of Kasiviswanathan Chettiar affirmed on the 21st day of June, 1971, the Affidavit of Ng Siew San affirmed on the 8th day of February, 1972 all filed herein AND UPON HEARING the arguments of Counsel aforesaid IT WAS ORDERED that this Originating Summons do stand adjourned for Judgment and the said Originating Summons coming on for Judgment this day in the presence of Mr. Letchumi Kandan of Counsel for the Applicant and Mr. M. Segaram of Counsel for the Respondent IT IS ORDERED that the Applicant's claim for foreclosure of the Respondent's six parcels of land be and is hereby dismissed AND IT IS ORDERED that upon payment of the sum of Dollars Nineteen thousand and four hundred only (\$19,400/-) by the Respondent to the Applicant within two (2) months from the date hereof

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- (i) it is declared that the contract of loan dated the 11th day of January, 1965 entered into between the Respondent and the Applicant and the Charge Presentation No. 167/65 Volume 204 Folio 94 dated 11th day of January, 1965 executed by the Respondent in favour of the Applicant is illegal and void; and
- (ii) it is ordered that - (a) the Registrar of Titles do cancel the Memorials appearing on the Issue Document of Title and on the Register of Documents of Title to lands charged by the Respondent in favour of the Applicant as security for loan dated 11th day of January, 1965;

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(b) the Chargee/Applicant do deliver up the Note or Memorandum for cancellation;

In the High Court

(c) The Chargee/Applicant do within fourteen (14) days from the date of payment deliver to the Chargor/Respondent or his solicitors the duplicate copy of the Memorandum of the Charge and issue documents of title relating to the aforesaid lands;

No.11

Order

12th August 1972

(continued)

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(d) the said Chargee/Applicant do within fourteen (14) days from the date of payment execute a good and valid registrable Memorandum of Discharge, discharging the Charge Presentation No. 167/65 Volume 204 Folio 94 dated 11th day of January, 1965 and deliver the same to the Chargor/Respondent or his Solicitors, failing which the Senior Assistant Registrar of the High Court, at Kuala Lumpur be and is hereby empowered to execute the said Memorandum of Discharge for and on behalf of the Chargee/Applicant;

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AND IT IS LASTLY ORDERED that there be no order as to costs.

Given under my hand and the Seal of the Court this 12th day of August, 1972.

Sd: Voon Thong Shin
.....
Senior Assistant Registrar,
High Court, Kuala Lumpur.

(Seal)

L.S.

In the Federal Court

No. 12

Notice of Appeal

25th August 1972

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. OF 1972

Between

Ng Siew San ... Appellant

And

Menaka w/o M. Deivarayan ... Respondent

(In the Matter of Kuala Lumpur High Court Originating Summons No. 59 of 1971

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Between

Menaka w/o M. Deivarayan ... Applicant)

And

Ng Siew San ... Respondent

NOTICE OF APPEAL

TAKE NOTICE that the Appellant abovenamed being dissatisfied with the decision of the Honourable Mr. Justice Mohd. Azmi given at Kuala Lumpur on the 12th day of August, 1972 appeals to the Federal Court against such part only of the said decision as decides that the Appellant should pay to the Respondent the sum of Dollars Nineteen thousand four hundred only (\$19,400.00) within two months from the 12th day of August, 1972 as a condition of ordering the relief prayed by the Appellant.

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Dated this 25th day of August, 1972.

Sd: M. Segaram & Co.
.....
Solicitors for Appellant.

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To:-

In the Federal Court

(1) The Registrar,
The Federal Court,
KUALA LUMPUR.

No.12

(2) The Senior Assistant Registrar,
High Court,
KUALA LUMPUR.

Notice of Appeal

25th August 1972

(3) The Respondent abovenamed or her Solicitors,
Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Eastern Bank Building,
KUALA LUMPUR.

(continued)

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No. 13

No. 13

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. 90 OF 1972

Between

Ng Siew San ... Appellant

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And

Menaka wife of M. Deivaraya ... Respondent

(In the Matter of Kuala Lumpur High Court Originating Summons No. 59 of 1971

Between

Menaka wife of M. Deivarayan ... Applicant.

And

Ng Siew San ... Respondent)

MEMORANDUM OF APPEAL

Ng Siew San the appellant abovenamed appeals

In the
Federal Court

—
No.13

Memorandum
of Appeal

2nd October
1972

(continued)

to the Federal Court against part of the decision of the Honourable Mr. Justice Mohd. Azmi given at Kuala Lumpur on the 12th day of August, 1972 on the following grounds:

1. The Learned Trial Judge having held that the Respondent had failed to comply with Sub-Sections (b) and (c) of Section 8 of the Moneylenders Ordinance, 1951 whilst carrying out the transaction was wrong in law in ordering the Appellant to pay the Respondent the sum of \$19,400.00 as a condition of obtaining the reliefs sought by the Appellant. 10

2. The Learned Trial Judge was wrong in finding that the Respondent and her Agent Manickam Chettiar were not aware of Section 8 of the Moneylenders Ordinance 1951 when the circumstances of the case and the evidence adduced do not warrant such a finding.

3. The Learned Trial Judge should have held that upon the evidence adduced and the circumstances of the case the Respondent and her Attorney Manickam Chettiar were aware that the business of moneylending as such have to be carried on in the authorised name of AR.PR.M. Firm and agreement or security in connection with the loan have to be taken in the authorised name. 20

4. The Learned Trial Judge misdirected himself and erred in fact and in law in failing to consider the evidence of A.W. 2 N.AR.K. Nachiappa Chettiar that all moneylending transactions carried out by the Respondent or her attorneys were in the name of the Respondent as a result of the agreement reached between the respondent and the other partner at the time the moneylending business was formed. 30

5. The Learned Trial Judge was wrong in holding that the Appellant must prove that the Respondent was aware of Section 8 of the Moneylenders Ordinance or the illegality of the transaction when there was no such burden of proof on the Appellant. 40

6. The Learned Trial Judge erred in fact and in law in considering whether the Appellant was aware of the illegality in coming to the conclusion whether

the Respondent was aware of Section 8 of the Moneylenders Ordinance or whether the Respondent or her attorney were aware of the illegality of the transaction.

In the
Federal Court
—
No.13

7. The Learned Trial Judge was wrong in finding that the Respondent discovered the illegality only when the present proceedings were commenced when the fact of the case do not warrant such a finding.

Memorandum
of Appeal
2nd October
1972

(continued)

10 8. The Learned Trial Judge was wrong in law in finding that the Respondent discovered the illegality only when the present proceedings were commenced in the absence of Special Circumstances.

9. The Learned Trial Judge was wrong in law in holding that Section 66 of the Contract Ordinance applies to the present case.

20 10. The Appellant would contend that having regard to the fact that the respondent and her Attorney Manickam Chettiar were aware or should have known that they have certain mandatory obligations imposed by the Moneylenders Ordinance and having regard to the fact that the Respondent and her attorney Manickam Chettiar had declared and therefore known or ought to have known that the business of Moneylending as such have to be carried on in the authorised name of AR.PR.M.Firm and having regard to the fact that with available materials prior to or at the time of the transaction, the respondent and her Attorney Manickam Chettiar would have known if they had taken the least trouble to ascertain that it is illegal to carry on the business of moneylending as such in any name other than the authorised name and that the agreement or security for the loan have to be taken in the authorised name and having regard to the fact that there is no obscurity or difficulty in applying section 8(b) and (c) and having regard to the fact that the conduct of the respondent and her attorney Manickam Chettiar were deliberate, if not highly negligent, for consideration which at the time were very likely wise consideration, in closing the door to any investigation in what name the documents of loan must be taken, the Learned Trial Judge should have held that Section 66 of the Contract Ordinance does not and cannot apply to the present case.

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In the
Federal Court
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Memorandum
of Appeal
2nd October
1972
(continued)

11. The Learned Trial Judge was wrong in holding that Section 66 of Contract Ordinance applies to Moneylending transaction or to the provisions of the Moneylenders Ordinance, 1951.

12. The Respondent will contend that the transaction being illegal and void section 66 of the Contract Ordinance cannot apply.

13. The Respondent will further contend that the transaction being illegal and void and illegal purpose having been achieved Section 66 of the Contract Ordinance does not apply.

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14. The Learned Trial Judge was wrong in fact and in law in holding that the Appellant knew all along that the loan was given by AR.PR.M. Firm when the facts of the case do not warrant such a finding.

15. The Learned Trial Judge was wrong in holding that the present case comes within the first limb of Section 66 of the Contract Ordinance when under Section 2 of the Contract Ordinance the present case amounts to a contract.

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16. The Learned Trial Judge should have held that the present case comes under the Second Limb of Section 66 of the Contract Ordinance and as the benefit of the Contract was received after the contract ceased to be void, Section 66 of the Contract Ordinance does not apply.

Dated this 2nd day of October, 1972.

Sd. M. SEGARAM
.....
Appellant
Solicitors for the Appellant.

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To:-

(1) Chief Registrar,
Federal Court of Malaysia,
KUALA LUMPUR.

(2) Senior Assistant Registrar,
High Court,
KUALA LUMPUR.

In the
Federal Court

No.14

Notice of
Cross-Appeal
11th October
1972

(continued)

given at Kuala Lumpur on the 12th day of August 1972 ought to be varied to the extent and on the grounds hereinafter set out:-

1. The dismissal of the Applicant's claim for sale by public auction under section 256 of the National Land Code of the Appellant's six pieces of land charged by the charge bearing Presentation No.167/65 should be set aside.

2. It should be ordered that the lands held under Grants for Land Nos. 7695, 8243, 10624, 18012 and Certificates of Title Nos. 12866 and 12867 for Lots Nos. 125, 114, 114A, 327, 321 and 323 respectively in the Township of Tanjong Malim in the District of Batang Padang charged to the said Respondent under the charge bearing Presentation No.167/65 registered in Register of Charges Volume 204 Folio 94 should be sold by public auction under the direction of the High Court under section 256 of the National Land Code to satisfy the principal sum of \$20,000/- with interest thereon at the rate of 12% per annum from the 11th day of April 1965 to date of payment and costs and that the High Court should make consequential Orders.

3. Alternatively to paragraph 2 above, it should be ordered:-

(a) that the Appellant should pay the said Respondent the sum of \$20,000/- together with interest thereon at the rate of 12% per annum or 6% per annum or at such other rate as the Court may deem fit and state in the Order from the 11th day of April 1965 to date of payment and costs;

(b) and that in default of the Appellant complying with the Order under paragraph 3(a) above within one month or such other period as the Court may deem fit and state in the Order from the date of the Order, that the lands held under Grants for Land Nos. 7695, 8243, 10624, 18012 and Certificates of Title Nos. 12866 and 12867 for Lots Nos. 125, 114, 114A, 327, 321 and 323 respectively in the Township of Tanjong Malim in the District of Batang Padang charged to the said Respondent under the charge bearing Presentation No.167/65 registered in Register of Charges Volume 204 Folio 94 should be sold by public

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auction under the direction of the High Court to satisfy the principal sum of ₹20,000/- with interest thereon at the rate of 12% per annum or at the rate of 6% per annum or at such other rate as the Court may deem fit and state in the Order under paragraph 3(a) above from the 11th day of April 1965 to date of payment and costs.

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(continued)

10 4. The grounds on which the said Respondent cross-appeals for the Orders set out in paragraphs 1 and 2 and/or 3 above are as follows:-

20 (a) It is respectfully submitted that the learned Judge erred in holding that the said Respondent's partner AL.Chockalingam in AR.PR.M. Firm was also licensed to carry on business as moneylender. The evidence was that the said Chockalingam is not a resident of this country and came to this country twice - maybe in 1963 or 1964. The said Chockalingam was therefore not actively conducting in the State of Selangor the money-lending business of the AR.PR.M. Firm.

(b) The learned Judge erred in holding that sections 8(b) and (c) of Moneylenders Ordinance have been contravened.

(c) The learned Judge erred in holding that because the said sections 8(b) and 8(c) have been contravened "the loan transaction in this case is illegal and void".

30 (d) It is respectfully submitted that the said Respondent has not entered into the loan transaction in this case in her personal name only. The agreement entered into should be held to be made up not only of the two documents headed "Memorandum under section 16" and "Memorandum of charge" but also of the cheque dated 1.11.1965 for ₹20,000/- drawn expressly "For AR.PR.M.Firm" by Manickam Chettiar the agent.

40 (e) The Land Code (F.M.S.Cap.138) which was in force on 11.1.1965 when the said charge was executed did not permit a charge to be made in favour of a firm.

(f) The said two Memoranda were prepared by a solicitor and the said cheque for ₹20,000/- was made out in favour of the firm of solicitors of which he was a member.

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(continued)

(g) It is respectfully submitted that the said two memoranda must have been prepared by the said solicitor to be taken in the personal name of the Respondent either in order to comply with the Land Code or in order to comply with the Land Code and in view of the facts that there was a subsisting licence in favour of the said Respondent under the Moneylenders Ordinance and that the said Manickam Chettiar had been granted a Power of Attorney by the said Respondent as Managing Partner of the AR.PR.M.Firm authorizing him to manage the said AR.PR.M.Firm and that the said Chockalingam was not actively conducting in the State of Selangor the moneylending business of the said AR.PR.M.Firm.

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(h) The accounts were kept by the said AR.PR.M.Firm as accounts of the said AR.PR.M.Firm. The receipts issued for payments were the receipts AR.PR.M.Firm and were signed "For AR.PR.M. Firm".

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(i) The learned Judge has held that from the evidence it is reasonable to infer that the Respondent knew all along that the loan was given by the AR.PR.M.Firm and that the said Respondent was merely acting as Managing Partner of that firm.

(j) If, contrary to the said Respondent's present submission, it is held that the said Land Code would have permitted a charge to be made out in favour of a firm, it is respectfully submitted that the taking of the said charge in favour of the said Respondent and the consequent taking of the document headed "Memorandum under section 16" in favour of the said Respondent were caused by a mistake as to the law in force in the Federation and is not voidable in view of section 22 of the Contracts Ordinance 1950.

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(k) In view of the learned Judge's finding that the fact of non-compliance with the said section 8(b) and 8(c) was only discovered by both parties when the Statement of Defence dated February 8, 1972 was filed the learned Judge should have applied section 22 of the Contracts Act 1950 and should have held that the contract of loan and the said charge were not voidable.

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(l) In view of the fact that the said two

Memoranda were prepared by a solicitor, and that solicitor was the Appellant's solicitor as well as the common solicitor the Appellant is estopped in the circumstances of this case from denying the validity of the loan transaction in this case and of the said charge.

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(continued)

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(m) It is respectfully submitted that the Moneylenders Ordinance makes a distinction between its provisions which expressly make an agreement or security unenforceable in case of non-compliance and those provisions of it which do not purport to make an agreement or security unenforceable in case of non-compliance.

(n) It is respectfully submitted that contravention of the said sections 8(b) and/or 8(c) does not make the contract or the charge so contravening unenforceable. Such a contract and such a charge are not unenforceable.

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(o) The learned Judge erred in not awarding interest to the said Respondent and in reducing from the principal sum of ₹20,000/- the sum of ₹600/- already paid as interest and providing for payment of only the balance of ₹19,400/- to the Respondent. Interest at 12% per annum as due under the contract of loan and the said charge should have been awarded to the said Respondent, or interest at 12% per annum or at such other rate as the Court might deem fit should have been awarded to the Respondent under section 66 of the Contracts Ordinance 1950 as part of the compensation under the said section 66, or interest at 12% per annum or at least at 6% per annum or at such other rate as the Court might deem fit should have been awarded to the said Respondent under section 11 of the Civil Law Ordinance 1956.

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(p) The learned Judge erred in not providing for the possibility of the Appellant not paying to the Respondent even the sum of ₹19,400/-.

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(q) The learned Judge erred in not ordering the Appellant to pay the said Respondent any sum of money.

Dated this 11th day of October 1972.

Sd. V.K. Palasuntharam
Solicitor for the said Respondent.

In the
Federal Court

Dated at Kuala Lumpur this 11th day of October
1972.

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Notice of
Cross-Appeal

Registrar.

11th October
1972

To:

(continued)

The Appellant abovenamed
or his Solicitors M/s. M. Segaram & Co.,
No.17 & 19, Jalan Silang,
Kuala Lumpur.

The address for service of the Respondent is
c/o her solicitor Mr. V.K. Palasuntharam whose
address for service is Room 403, Chan Wing
Building (4th Floor), 38 Jalan Mountbatten, Kuala
Lumpur.

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No.15

No. 15

Written
Submission of
the Appellant
to the
Respondent's
Cross-Appeal

Written Submission of the Appellant
to the Respondent's Cross Appeal

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. 90 OF 1972

5th March
1973

BETWEEN

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Ng Siew San ... APPELLANT

AND

Menaka wife of
M. Deivarayan ... RESPONDENT

(In the Matter of Kuala Lumpur High
Court Originating Summons No.59 of 1971

Between

Menaka wife of
M. Deivarayan ... APPLICANT

And

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Ng Siew San ... RESPONDENT)

WRITTEN SUBMISSION OF THE APPELLANT
TO THE RESPONDENT'S CROSS APPEAL

In the
Federal Court

No.15

Written
Submission of
the Appellant
to the
Respondent's
Cross-Appeal

5th March
1973

(continued)

1. My Lords, Counsel for the Respondent at the hearing of his Cross-Appeal, relying on Sections 49, 76 and 78 of the Penal Code, has argued that as the Land Code does not permit the Charge herein to be taken in the authorized name, the Respondent has not committed an offence under section 8(b) and (c) of the Moneylenders Ordinance, 1951. Before I come to this part of the Respondent's argument I think it is worth while to consider what is the actual meaning of Section 8(c) of the Moneylenders Ordinance.

2. The Section 8(c) has two limbs. The First Limb reads, "If any person -

(c) in the course of business as a moneylender enters as principal or agent into any agreement with respect to any advance or repayment of money otherwise than in his authorized name..."

3. I shall now consider the First Limb of Section 8(c) of the Moneylenders Ordinance, 1951. The First Limb covers any agreement regarding advance or repayment. Undoubtedly, the Memorandum which was executed pursuant to Section 16 of the Moneylenders Ordinance, 1951, was an agreement within the meaning of the First Limb of Section 8(c). The Memorandum must be taken in the authorized name. In this connection, I refer to Chai Sau Yin vs. Kok Seng Fatt (1966) 2 M.L.J.54: where though the Moneylender had taken the Memorandum in the personal name, yet to comply with the First Limb of Section 8(c), shown on the face of the Memorandum, his authorised name of Yoong Shin Finance Company. As the authorised name of AR.PR.M. Firm was not shown at all in the Memorandum, which is an agreement with respect to advance or repayment of money, the Respondent has failed to comply with the First Limb of Section 8(c) and therefore liable for the penalty provided. It cannot be said by the Respondent that in the Memorandum the authorized name cannot be shown at all. In fact the authorized name could be shown as shown by the Moneylender in the decision of Chai Sau Yin v. Kok Seng Fatt. Therefore it is apparent that the Respondent has failed to comply with the First Limb of Section 8(c).

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Submission of
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Respondent's
Cross-Appeal

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1975

(continued)

4. I shall now come to the Second Limb of Section 8(c) which reads as follows: "If any person -

(c) takes any security for money otherwise than in his authorized name,"

(a) It is important to note that the Second Limb covers any Security for money.

(b) In Sterling Vs. John (1923) 1 K.B.557:
Lord Sterndale M.R. considering Sub-Section 1(c) of Section 2 of the Money-lenders Act 1900, at page 561 said, "The question is were they securities for money? It seems to me, looking at the various Acts of Parliaments in which cheques are referred to, and the expression "securities" is used, that they were. The meaning of the word "securities" is not confined to documents which gives a charge upon specific property."

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(c) It is clear that the charge herein executed by the Appellant in favour of the Respondent is a security, within the meaning of the Second Part of Section 8(c).

(d) It is conceded that the Land Code does not permit the Charge herein to be in the name of the Respondent's authorized name of AR.PR.M. Firm.

(e) Hence, the question of construction of the Second Part of Section 8(c) has to be considered as it covers any security, including of course, Charge.

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(i) In Young & Co. Vs. Mayor, etc., of Leamington (1883) 8 App.Cases 517, at page 526, Lord Blackburn said that "Courts ought in general in construing an Act of Parliament, to assume that the Legislative known the existing state of the Law." Therefore, for the purpose of the construction of Section 8(c), we must assume that Legislative when enacting that any security taken by the Money-lender must be in the authorized name,

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knows that under the Land Code a Charge cannot be taken in the authorized name, particularly where the authorized name is not the personal name or names of the Limited Company.

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- 10 (ii) Again in Income Tax Special purpose Commissioners Vs. Pemsel (1891-1894) A.E.R.28, Lord Halsbury, L.C. held that "A Court of Law, in construing a statute, is bound to proceed on the assumption that the Legislature is an ideal person that does not make mistakes."
- (iii) Lord Brougham in Auchterarder Presbytery Vs. Lord Kinroull (1839) 6 CL & F 646, at page 686 said, "a statute is never supposed to use words without a meaning."
- 20 (iv) In Quebec Railway, Light, Heat and Power Company Ltd. Vs. Vandry & Others AIR P.C.1920 181, at page 186, Lord SUMNER observed, "Secondly there is no reason why the usual rule should not apply to this as to other statutes, Namely that effect must be given is possible to all the words used, for the Legislature is deemed not to waste its words or to say anything in vain."
- 30 (v) Again in Hill Vs. William Hill (Park Lane) Ltd. (1949) A.C.530, at page 546, Viscount Simon said, "It is to be observed that though a parliamentary enactment (Like Parliamentary eloquence) is capable of saying the same thing twice over without adding anything, to what has already been said once, this repetition in an Act of Parliament is not to be assumed. When the Legislature enacts a particular phrase in a Statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible be given to every word in the statute implies, that unless there is a good reason to the contrary, the words add something which has not been said immediately before."
- 40 (vi) Again Lord Bramwell said in Cowper-Essex Vs. Action L.B. (1889) 14 App. Cases 153, at page 169, "the words of a statute never should in interpretation be added or subtracted from, without almost a necessity."

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Submission of
the Appellant
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Respondent's
Cross-Appeal

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(continued)

(vii) Though the Land Code does not permit a Charge to be taken in the authorized name of AR.PR.M. Firm, but does not prohibit when the Charge is taken in the personal name of the Moneylender, the authorised name is shown after the Moneylender's name:- Such as in this case: Menaka wife of M. Deivarayan of AR.P.R.M.Firm. In this connection I refer to Sockalingam Chetty Vs. The Registrar of Titles, F.M.S. L.R.(1915)1 page 224.

At page 396 of The Torrens System in Malaya by S.K. Das, the Learned Author says, "The expression "shall execute" instruments in one of the prescribed forms in the schedules to the Land Code is not a bed of Procrustes into which each particular transaction must be fitted by mutilation or torture so as to conform in all respects to the standard patterns set therein. The proper registering authority has been given a discretion to call in aid the elastic provisions of section 230(a) and "to permit such alterations and additions as are necessary or desired and are not inconsistent with anything in any written Law contained."

Again at page 397, the Learned Author says, "The question in each case where there is a variation between the form of the memorandum sought to be registered and the form in the schedule is not whether the proposed memorandum does not literally comply with the precise form prescribed for such instrument but whether the variation is a matter of substance. Every system of Torrens legislation contains a provision permitting the registrar some latitude in registering a document "modified or altered in expression to suit the circumstances of every case and any variations from such forms respectively in any respect not being a matter of substance."

"Indeed, in the forms for charges and leases as given in the schedules, the insertion of special stipulations, terms and conditions is in many cases specifically authorised, for no rigid form can meet every set of circumstances that may arise and the forms may be added to or deducted from so

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as to meet the actual circumstances of the case for the time being under consideration."

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8. The purpose of Section 8(c) of the Moneylenders Ordinance, 1951 is well set out by Atkin L.J. in Merz vs. South Wales Equitable Money Society Limited (1927) 2 K.B. 366. In Cornelius Vs. Phillips (1916-1917) A.E.R. 685, at page 693 Lord Atkinson, said, "In the argument in the present case, the object aimed at by this latter provision has, I think, been misunderstood. The clause had a special object - namely to require that as far as possible the name of the moneylender should appear in a written agreement on the face of the document as a contracting party in order to prevent these agreements being made in the names of persons who were trustees for the moneylender or acted as agents for him as an undisclosed principal."

9. It may be worthwhile to note that in the following decided cases the moneylenders have taken the securities in the manner the construction of Section 8(c) submitted by me earlier.

- (a) In Chai Sau Yin Vs. Kok Seng Fatt (1966)
3 M.L.J. 54, Kok Seng Fatt was licensed as a Moneylender in the authorized name of Yoong Shin Finance Co. Kok Seng Fatt took the Memorandum of the loan as Kok Seng Fatt of Yoong Shin Finance Company. It is very important to bear in mind that though in the Charge the authorized name was not disclosed, yet he has complied with Section 8(c) of the Moneylenders Ordinance, 1951 by annexing a copy of the Charge to the Memorandum. At page 58, left hand column 2, sentence after letter 'D', Thomson L.P. said, "In the present case the memorandum clearly consists of the three documents - the document entitled "Memorandum under Section 16", the Charge, and the agreement between the parties from which the transaction stemmed. The first document refers in gremino to the charge and after describing it states it is "annexed hereto and marked A". It likewise refers to the former loan and the agreement regarding it 'a copy of which agreement is attached hereto and marked "B". And the Charge is marked "A" and the agreement is marked "B" and both are attached to the

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first document. From all of this it would seem to be clear that the three documents are to be read as one and together constitute the memorandum as required by the Section."

(b) In Whiteman Vs. Sadler (1910) A.C.514, Arthur George Whiteman and Walter Elphick Whiteman, the Moneylenders who were licensed in the authorised name of Cobb & Co., took the Bill of Sale in the following manner: Arthur George Whiteman and Walter Elphick Whiteman trading in Co-partnership as Cobb & Co. See page 529.

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(c) In Peizer Vs. Leftkowits (1912) 2 K.B.235, Shara Peizer who was registered as Money-lender in the registered name of Wentworth Loan and Discount Office, took the promissory Note as follows: S. Peizer of Wentworth Loan and Discount Company.

It is apparent from the above case and many other cases that could be found in the law reports, that the Moneylenders though had taken the Securities in the personal name, had shown their registered or authorized name in the securities. In none of the cases, has any objections been taken that such a manner of taking the securities contravened the relevant provision of the Moneylenders Act.

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10. It is my submission that such a construction ought to be put, so that any Charge so taken in the manner shown above complied with the Land Code as well as the Second Limb of Section 8(c) of the Moneylenders Ordinance.

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"It is always proper" said Lord Reid in Gortaida Vs. I.R.C. (1968) A.C. 553, at page 612, "to construe an ambiguous word or phrase in the light of mischief which the provision is obviously designed to prevent and in the light of the reasonableness of the consequences which follow from giving it a particular construction." The construction that has been submitted by me regarding Section 8(c) is in keeping with the object of that particular Section 8(c) that in all agreement regarding advance or repayment of money or any securities for money, the Moneylenders' authorized name is shown.

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The observation of Fry L.J. in (1889) 22 Q.B.D. 513 is very material. At page 519, he added, "the only alternative construction offered to us would lead to this result - that the plain intention of the Legislature has entirely failed by reason of a slight inexactitude in the language of the Section. If we were to adopt this construction, we should be constructing the Act in order to defeat its objects rather than with view to carry its objects into effects."

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My learned friend's contention that under the Land Code, the Charge can only be taken in the personal name and therefore it is not necessary to comply with Section 8(c) would defeat the objects of the Legislature in enacting Section 8(c). The construction placed upon my learned friend on Section 8(c) runs counter to the authorities submitted by me regarding construction of an Act of Parliament.

11. My Lords, on the authorities submitted, the construction that has been put by me regarding Section 8(c) would in fact carry the objects of the Legislature in enacting Section 8(c) and would also reconcile with the Land Code.

12. If the construction submitted by me is place on Section 8(c) of the Moneylenders Ordinance, it follows that my learned friend's argument that the Respondent was justified in taking the Charge in her personal name, without the addition of the authorized name does not stand.

13. The combined effect of Section 5(1) and (2) and Section 6(1) and (2) and Section 8(a), (b) and (c) of the Moneylenders Ordinance is that there is a mandatory obligation on a Moneylender to carry on the business of money-lending in the authorized name and at the authorized address. Any Agreement for advance or repayment of money or any securities must be taken by the moneylender himself in his personal name and the documents must also show the authorized name.

14. My learned friend has contended that as there was a material difference in the Section 2(1)(b) and (c) of the English Moneylenders Act, 1900, now repealed and the present Section (1) sub-section 3(b) and (c) of the English Moneylenders Act, 1927,

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which subsection are the same as our Sections 8(b) and (c), the various cases decided on the Section 2(1) (b) and (c) of 1900 have no application to our Section 8(b) and (c).

15. It is submitted that cases decided on subsection (1) (b) and (c) of Section 2 of the Moneylenders Act, 1900 are applicable to the interpretation of the similar language employed in Section 8(b) and (c) of our Moneylenders Ordinance, 1951.

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16. Lord Meston in his book on the law relating to Moneylenders 4th Edition at pages 36, 346 and 354 has taken to view that the decisions on Subsection 1(b) and (c) of Section 2 of the 1900 Moneylenders Act applies to Section 1(3)(b) and (c) of the 1927 English Moneylenders Act.

17. Morris J. in Grosvenor Guarantee Trust Ltd. Vs. Colleno 1950 W.N. 501, applied a dictum of Lord Finlay in Cornelius Vs. Phillips (1916-1917) A.E.R. 685.

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18. Again Gill J. (As he then was) in Karuthan Chettiar Vs. Parameswara Iyer (1966) 2 M.L.J. 151 held that "I must add however, that the penalty imposed by Section 8(c) of the Ordinance is not for the protection of revenue but for the protection of the public so that in a proper case a contravention of the Section would render the Contract illegal and void."

19. My learned friend has at length referred to Judgment of Lord Dunedia and Lord Mersy in Whiteman and others vs. Sadler (1910) A.C. 514 and contended that contravention of Section 8(b) and (c) does not make the Contract Void.

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It is important to note that in Cornelius Vs. Phillips (1916-1917) A.E.R.685, Lord Dunedin himself at page 691, said, "there remains the question what is the result: and it was strongly urged that the decision of this house in Whiteman Vs. Sadler (1910) A.C. 514 settles that unless there is an infringement of Section 2(1)(c), the contract itself is not avoided. The opinion of Lord Mersey does go that length, and an expression used by myself, *expressio acius est exclusion alterius*, would although directed to Section 2(1)(a), apply in terms of Section 2(1)(b). But

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the actual decision of the House only applied to Section 2(1)(a), and I am satisfied on reconsideration that the expression I used was not accurate if applied to Section 2(1)(b), because Section 2(1)(c) and Section 2(b) do not cover exactly the same ground. The judgment is binding on us, but further I have no doubt it was right. Two views may be taken. Inasmuch as Whiteman had been de facto registered, although wrongly registered, it might be held that there had been no contravention of any of the sections. That is not my view. I think there had been a contravention of Section 2(1)(a), though I think that in view of the faulty regulations issued by the Inland Revenue, the Attorney General might well have withheld his consent to any prosecution, or even if he had given it, a jury might have refused to convict. But the contravention had nothing directly to do with the contract. In fact it came within the category of matters collateral, as pointed out by Turnet, C.J. in Pergusson Vs. Norman (3). This was the view expressed in the present case by Phillmore, L.J. and I think it was the correct one. As I said in Whiteman's case (2), the question always comes to be put as Parke, P., put it in Cope Vs. Rowlands(4). Does the statute seek to prohibit the contract? Section 2(1)(b) seems to me to prohibit the contract, though it expressed in words which apply directly to the contractor rather than to the contract. Indeed, if one looks at the mischief sought to be remedied, the same seems to me a stronger one than that of Cope Vs. Rowlands (4). I am, therefore, of opinion that the Appeal should be allowed." Lord Finlay L.C., Viscount Haldane, Lord Atkinson and Lord Parmoor considered the decision of Whiteman & another Vs. Sadler (1910) A.C.514, in Cornalius Vs. Phillips (1916-1917) A.E.R.685 and came to conclusion that contravention of Section 2(1)(b) and (c) of the Moneylenders Act, 1900, the Contract is Void and can confer no rights.

20. My Learned friend has contended that the cheque shown in page 114 of the Appeal Record and given by the said Manickam Chettiar to M/s. Shook Lin & Bok should be read together with the Memorandum and the Charge and in support of his contention he relied on the case of Karuppiah Vs. Kehar Singh (1965) 2 M.L.J.58.

21. Karuppiah Vs. Kehar Singh (1965) 2 M.L.J.558,

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was an Appeal from the decision of Gill J. (as he then was) said, "Taking the Memorandum and the Promissory Note separately there would appear to be no doubt that the provisions of Section 16 of the Ordinance have not been complied with. The question which I now propose to deal with is whether the documents read together complied with the requirements of Section 16. In Reading Trust Ltd. Vs. Spero, the Court, without deciding the point, expressed the view that the two documents in a case such as the present would constitute a sufficient note or memorandum of the contract, particularly where the promissory note can be identified as the one to which reference is made in the memorandum. The memorandum in this case called the security to be given an "On Demand". The Plaintiff's evidence is that by "On Demand" was meant a promissory note. Indeed it will be more accurate to call it an "On Demand Promissory Note". I think it has been satisfactorily proved that the form of promissory note was in existence when the memorandum was signed. The promissory note was signed almost simultaneously so that there can be very little doubt that the two documents were connected with each other. In Tooka Vs. Bennett (T.W.) & Co. Ltd. (7) it was held that the memorandum and a bill of sale could be read together to constitute a good memorandum under Section 6 of the Moneylenders Act, 1937 provided the memorandum says that a copy of the bill of sale is attached to the memorandum, and the bill of sale is in fact so attached. In the present case there is no mention in the memorandum that a copy of the promissory note is attached. However, there is evidence that a copy was supplied as soon as the promissory note was signed. In the circumstances, in my opinion the two documents can be read together to constitute a good memorandum."

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22. It must be borne in mind that in Kehar Singh Vs. Karuppiah the borrower was given the copies of documents promissory note and Memorandum. The case does not involve a cheque.

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23. Again the Account Payee cheque shown in page of the Appeal Record was given to M/s. Shook Lin & Bok made payable in their favour. After the cheque was put into the clients' account of M/s. Shook Lin & Bok, the Appellant received from M/s. Shook Lin & Bok a cheque drawn by them.

24. The decision in Kehar Singh Vs. Karuppiah cannot apply to the present case as the facts are entirely different.

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25. If it is held that the cheque could be read together with the Charge and the Memorandum, the whole object of Section 8(c) that any agreement and security must be taken in the authorized name would be defeated.

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10 26. In Edgware Trust Ltd. Vs. Lawrence (1961)
3 A.E.R. 141, Diplock J. held that before documents
could be read together copies of the documents to
be read have to be left with the borrower. At
page 144, he said, "In my view (and I refer in
passing to Dunn Trust Ltd. Vs. Cohen) the
Memorandum itself must contain all the terms of
the Contract and there as in this case, in my view,
the memorandum does not contain the important
provisions of the default clause. It is not
20 permissible for me to look at the promissory note
to ascertain what the meaning of those unintelli-
gible words was meant to be unless a copy of the
promissory note was left with the Borrower."

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27. At the trial before Azmi J. Counsel for the Respondent conceded that the Respondent has not complied with Section 8(b) and (c).

30 28. Though the Respondent has kept the Account Book and the Receipt in the authorized name in the letters (see pages and of the Appeal Records) and in the action itself no authorized name was disclosed. In this connection, in Chai Sau Yin Vs. Kok Seng Fatt (1966) 2 M.L.J. 54, the Money-lender had shown the authorized name.

40 29. At the material time of the loan, Manickam Chettiar was licensed as an Agent of AR.PR.M.Firm. See the last paragraph at page of the Appeal Records, wherein it was an agreed statement of fact that Manickam Chettiar was the holder of a separate licence issued under Section 5 of the Moneylenders Ordinance, 1951 to carry on as an Agent of AR.PR.M. Firm. AR.PR.M. Firm consists of the Respondent and one Chockalingam. The transaction herein was carried out by Manickam Chettiar as an Agent of AR.PR.M. Firm and he held power of Attorney from both partners.

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I submitted that under Section 8(c) of the Moneylenders Ordinance, the said Manickam Chettiar has to take the Memorandum and the Charge herein in both the personal names of partners and in the authorized name.

The licence given by the Registrar of Moneylenders to Manickam Chettiar to carry on the business of moneylending under the name of AR.PR.M. Firm does not authorize him to carry on the money-lending business in the name of Menka. 10

In Vorst Vs. Goldsten & Others (1924) A.E.R. 410 the Court held that a Licence given to a Firm does not permit one of the partner to carry on in his individual name.

Hence, the Memorandum and the Charge must be taken in the names of both the Partners and as only one partner's name was used, the respondent has not complied with Section 8(b) and (c) of the Moneylenders Ordinance, 1951.

30. The Respondent has contended that under Section 66 of the Contract Ordinance, the learned Trial Judge should have awarded interest to the Respondent on the sum of \$20,000.00 in addition to ordering the refund of \$19,400.00. 20

31. The facts of Baba Raja Mohan Manucha & Others Vs. Babu Manzoor Ahmad Khan L.R. 70 I.A. 1 which my learned friend cited and relied on, are entirely different from the present case.

(1) Sir George Rankin delivered the Judgment of Privy Council at page 8 at the last paragraph, observed, "In Baby Nisar case already cited, it was held by the Chief Court of Oudh and by the Board that the disability imposed by para 11 affected the judgment debtor's right to deal with his immovable property or part thereof, but did not take away his personal liability to repay the loan. In that case two mortgages were held to have been obtained by undue influence, and one of these - namely exhibit 5, dated August 14, 1919 - was also held to have been granted in violation para 11. The borrower's liability to repay the sum lent on this latter mortgage remained notwithstanding its invalidity as a charge; but judgment had been given in the Chief Court, not for the full contractual sum, but in view of the finding 30 40

of undue influence on the footing of a refund with simple interest at six per cent under section 65 of the Contract Act. This was also treated as a term which equity would impose as a condition of setting aside a transaction on the ground of undue influence. The claim on the covenant to repay was not barred by limitation, and there was no occasion to consider whether the lender, finding that he had no security, could repudiate or rescind the contract of loan and demand his money back; or whether if he did not do so he could claim both on the covenant to repay and also under Section 65 as if these were co-existing or cumulative rights. When the board negatived the defence of undue influence it gave decree on the basis of the borrower's contractual liability to repay the loan with interest at eight per cent with half yearly rests."

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(2) Whereas in the present case, the transaction is illegal and void and the contractual obligations cannot be enforced.

32. In Muralidhar Chatterjee Vs. International Film Company Limited L.R. 70 I.A. 35, Sir George Rankin, who delivered the Judgment of the Privy Council held, at page 49 top, "Sections 64 and 65 do not refer by the words "benefit" and "advantage" to any question of "profit" or "clear profit" nor does it matter what the party receiving the money may have done with it. To say that it has been spent for the purpose of the contract is wholly immaterial in such a case as the present. It means only that it has been spent to enable the party receiving it to perform his part of the contract - in other words, for his own purposes. If on the footing that all sums received have to be returned, the respondents can show that after paying for the positive print, the shipping charges and so forth they have made a loss owing to the refusal of the appellant to carry out the contract, then these charges will be reflected in their claim for damages. If, on the other hand, the respondents have been so fortunate as to get another person to take the appellant's place on terms equally remunerative to them, these payments will not even mean that the respondents have suffered more than nominal damages. On general principles they may set off such damages as they have sustained, but the Act requires that they give back whatever they received under the contract."

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33. Again in Govindram Seksaria (A Firm) Vs. Edward Radbone L.R. 74 I.A. 295, at page 303, Lord Morton of Henryton said, "Their Lordships agree with the following comments on Stone C.J. on Section 65 of the Contract Act: 'compensation for an advantage may appear to be a contradiction in terms, since compensation connotes a measure of loss or damage and not the value of an advantage. It should be noted that in Section 56 the expression used is 'compensation for any loss' and that under section 64 the party rescinding the contract is to restore any 'benefit'. Under section 65 the alternatives are to restore any advantage' or to make compensation for it to the person from whom he received it'. This must mean valuing or quantifying in money the advantage retained if retained it be."

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Apart from the terms of certain documents, which will be considered later, their Lordships feel no doubt that the decision of Blagden J. was correct. The result of Section 65 of the Indian Contract Act was that, as from September 3, 1939, each of the parties became bound to restore to the other any advantage which the restoring party had received under the contract of sale. In their Lordships' view, the custodian could not recover any sums in his actions, as pleaded, unless he proved that the value of the "advantage" which the appellants had received under the contract i.e. of the machinery which had been delivered to them, was greater than the sum of 83,875 Reichmarks, that sum being admittedly an "Advantage" which the custodian had received under the contract. Moreover, in their Lordships' view, the value of the machinery which was delivered to the appellants, for the purposes of Section 65 of the Act, must be taken to be the value of the machinery in India immediately after the contract had become void by reason of Section 65."

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Thus it is clear that the Respondent could only seek to recover the advantage received by the Appellant when the Agreement was void.

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34. In Sugachand & others Vs. Balchand AIR 1957, Rajasthan 89, the Court held that Section 65 (Indian Contract Act) does not lay down that the person receiving advantage is not only to restore that advantage but also pay further compensation. On the other hand, it shows that compensation

should be awarded in the alternative only when the advantage received by a person cannot be restored by the person from whom it has been received.

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10 35. In Laxmindar Vs. Sut Jyotena Ben AIR 1954 Kutch 7, the Court held that in case of a void contract under Section 23, Contract Act restitution can be allowed on the ground of public policy because a person cannot have the advantage of avoiding a Transfer and at the same time retaining the consideration passed. But compensation is different from restitution and to award compensation would be indirectly enforcing a void contract.

20 36. Again in Kanuri Siva Ramakrishnaiah Vs. Vemuri AIR.1960 Andh, Pradesh 186, at page 188, said, "the effect of Section 65 is that, in such a situation, it enables a person not in pari delicto to claim restoration since it is not based on an illegal Contract but disassociated from it. That is permissible by reason of the Section because the action is not founded on dealings which are contaminated by illegality. The party is only seeking to be restored to the statue quo ante."

30 37. Again in Alapathi Rama Murthi Vs. Krishnamal AIR. 1958, Andh. Pradesh 427, K. Subba Rao C.J. held that Section 65 confers a right of restitution when a Contract is discovered to be void. A party who has received any advantage under such a Contract is bound to restore it to the other. The doctrine of restitution in integrum is of General application and underlines the provisions of Section 65. The object of Section 65 is not to make a new contract between the parties, when the Contract entered into between them has been discovered to be void but only to restore the advantage received by one party thereunder to the other unless a Court can restore the parties to the original position having regards to the circumstances of each case, there is no scope for the restitution of Section 65.

40 38. It will be observed that in Harnath Kaur Vs. Inder Bahadur Singh L.R. 50 I.A. 69, interest was given only at the rate of 6% per centum from the date of institution of the suit and not at the rate or for the period claimed by the Plaintiff.

39. I submit - that no interest is payable under Section 66 of the Contract Ordinance.

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40. The Respondent has also relied on Section 11 of the Civil Law Ordinance, 1956 for the claim for interest.

41. Under Section 11 of the Civil Law Ordinance, the Trial Judge has an absolute discretion to award or not to award interest. As he has exercised his discretion not to award any interest his decision should stand. In this connection I refer to the case of Lim Joo Tong Vs. Koh Joo Chua (1970) 2 M.L.J. 73.

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42. I submit - that no interest should be awarded. If interest is awarded it is to all intents and purposes tantamount to enforcing as illegal and void contract and penalty imposed by the legislature would not be deterrent.

43. In Lodges Vs. National Union Investment Co. Ltd. (1904-1907) A.E.R. 333. No interest was awarded by Parker J. in putting the borrower in terms of repayment of loan to the moneylender before the borrower could obtain the securities.

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Dated this 5th day of March, 1973.

(Sgd.) M. Segaram
.....
SOLICITORS FOR APPELLANT.

This Written Submission of the Appellant to the Respondent's Cross-Appeal is filed by Messrs. M. Segaram & Co., Advocates & Solicitors, of Nos. 17 & 19, Jalan Silang, Kuala Lumpur, Solicitors for the Appellant abovenamed.

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JUDGMENT OF AZMI, L.P.IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (APPELLATE JURISDICTION)FEDERAL COURT CIVIL APPEAL NO. 90 of 1972

Between

Ng Siew San ... Appellant

And

10 Menaka wife of
M. Deivarayan ... Respondent.(In the Matter of Kuala Lumpur High Court
Originating Summons No. 59 of 1971)

Between

Menaka wife of
M. Deivarayan ... Applicant

and

Ng Siew San ... Respondent)

20 Coram: Azmi, Lord President, Malaysia
Suffian, Federal Judge,
Ong Hock Sum, Federal Judge.JUDGMENT OF AZMI, LORD PRESIDENT30 Menaka wife of M. Deivarayan (hereinafter
referred to as Menaka) applied by way of originating
summons to the High Court at Kuala Lumpur for an
order of sale by public auction of certain pieces
of land (hereinafter referred to as the said lands)
to satisfy a principal sum of \$20,000/- and interest
thereon, lent by her to Ng Siew San (hereinafter
referred to as Ng). The said lands were charged to
Menaka and a charge was registered at the Land
Office as security for the said loan. The applica-
tion was made by one Nachiappa Chettiar acting as the
attorney of Menaka. In my view it is important to
note that nowhere in his affidavit in support of the
application for the sale of the land did NachiappaIn the
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state that the moneylender was the AR.PR.M. Firm and that Menaka was merely the managing director.

Ng objected to the application upon several grounds and set out the facts and his grounds of objections which I summarise as follows:-

1. Menaka was licensed to carry on the business of moneylending under the authorised name of AR.PR.M. Firm at the authorised address of 30 Leboh Ampang, Kuala Lumpur.
2. Manickam Chettiar was licensed to carry on the business of moneylending as an agent of AR.PR.M. Firm at the same address. 10
3. The memorandum under sec. 16 of the Money-lenders Ordinance 1951 disclosed that Menaka is the lender and that Manickam Chettiar signed it as her attorney. The charge registered at the Land Office as Presentation No. 167/65 also disclosed Menaka as the chargee and the document was signed by Manickam Chettiar as her attorney. 20
4. It is alleged that both Menaka and Manickam Chettiar having been licensed to carry on the business of moneylending under the authorised name of AR.PR.M. Firm carried out the business in the name of Menaka, had contravened the provisions of sec. 8(b) of the Ordinance.
5. The licence granted to Manickam Chettiar to carry on the business of moneylending as an agent of AR.PR.M. Firm does not permit him to carry on the business in three ways at the same time, namely: 30
 - (i) in the name of the firm on behalf of the firm,
 - (ii) also separately on behalf of Menaka in her personal name and
 - (iii) AL. Chockalingam in his own individual name.
6. The memorandum under sec. 16 failed to disclose the following terms stated in the charge: 40

(a) that Ng shall not transfer, sell, charge or otherwise deal with the land without the written consent of the said chargee first had and obtained, and

(b) that the said chargee shall have the custody or possession of the issue documents of title of the land charged.

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10 7. Neither in the memorandum under sec.16 of the Ordinance nor in the memorandum of charge registered in the Land Office was disclosed the authorised name of AR.PR.M. Firm. Menaka having entered into the agreement for the loan and repayment of the money lent and having executed the said memorandum under sec.16 otherwise than in the authorised name of AR.PR.M. Firm, had rendered the transaction illegal, void and unenforceable.

Ng thereupon asked for a declaration to that effect.

20 Nachiappa Chettiar, Menaka's present attorney filed an affidavit in reply. He admitted the facts alleged in paragraphs 1, 2 and 3 above. He further stated that Menaka was at all material time the managing partner of AR.PR.M. Firm and the cheque and the receipts in connection with the loan were in the name of AR.PR.M. Firm. In reference to paragraph 4 above he said that Ng well knew at all material times that the lender was AR.PR.M. Firm and that Menaka was the managing partner. He denied that Ng was entitled to the prayer in paragraph 7. He further made the following claim:-

30 "4(a) Even if Ng is entitled to the prayers contained in paragraph 16 of his affidavit (paragraph 7 above) which is expressly denied by Menaka money not intended by Menaka to be given to Ng and Ng having enjoyed the benefit thereof is bound to restore the same to Menaka."

40 The learned Judge proceeded to consider the matter under three issues namely:-

(1) Whether Menaka has violated sec.8(b) of the Moneylenders Ordinance.

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(2) Whether she has violated sec. 8(c) of the said Ordinance and

(3) Whether the two contractual terms in the charge should have been included in the Memorandum under sec. 16.

The learned Judge in reference to the third issue above decided that the omission to include the two onerous terms in the memorandum under sec. 16 was not fatal to Menaka's application, since Ng had been supplied with the stamped copies of the charge and of the memorandum under sec. 16 and that in his view both the memorandum and the charge should be read together and would in the circumstances constitute sufficient compliance with the provisions of sec. 16. There is no appeal against this finding.

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The following facts emerge or may be inferred:-

1. that the authorised name of the moneylender is the firm of AR.PR.M. and the authorised address is 30 Leboh Ampang, Kuala Lumpur.
2. Manickam Chettiar was also licensed to carry out the business as an agent of the firm.
3. he was apparently also an attorney of Menaka.
4. the memorandum under sec. 16 showed that Menaka was the lender and it was signed by Manickam Chettiar as her attorney.
5. the memorandum on the charge registered at the Land Office disclosed Menaka as the lender. Again this document was signed by Manickam Chettiar as her attorney.
6. Two receipts were produced by Nachiappa Chettiar (Menaka's present attorney) and showed that Ng paid \$400/- on 28.8.69 and \$200/- on 16.3.65 as interest on this loan, and both receipts have the words "AR.PR.M. Firm, Managing Partner Menaka w/o Deivarayan, 30 Leboh Ampang, Kuala Lumpur." printed on them.
7. a cheque signed by Manickam Chettiar for AR.PR.M. Firm for \$20,000/- payable to

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Messrs. Shook Lin & Bok and dated 11th January 1965 was also in evidence.

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8. the ledger entries included in the bundle show that the firm was the lender.

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On the above facts the learned Judge came to the conclusion that the provisions of sec. 8(b) and 8(c) of the Ordinance had been contravened with the result that the loan was illegal and void but not unenforceable. Apparently counsel for Menaka at the hearing before the learned Judge conceded this.

Having come to that conclusion the learned Judge turned to the question whether in the circumstances of the case sec. 66 of the Contracts (Malay States) Ordinance 1950 applies.

Sec. 66 reads as follows:-

"66. When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it."

In deciding this question the learned Judge firstly made the following findings:

1. that both parties had no knowledge of the illegality until the affidavit by Nachiappa Chettiar had been filed, and
2. there was no evidence upon which such knowledge could be imputed to either of them.

He therefore concluded that sec. 66 applied and made an order that Menaka's application for an order of sale be dismissed and upon payment of the sum of \$19,400/- (the learned Judge deducted \$600/- interest paid to Menaka by Ng from the sum of \$20,000/- loaned to him) by Ng to Menaka, there would be a declaration that the contract of loan and the charge executed by Ng was illegal and void.

Ng appealed against the judgment of the trial Judge. He said the Judge was wrong in directing him to pay Menaka the sum of \$19,400/- as a condition

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of obtaining the relief he sought. He set out several grounds of appeal.

Menaka cross appealed. Her main contentions were that the trial Judge was wrong in holding that sec. 8(b) and 8(c) of the Moneylenders Ordinance had been contravened or that because of that the loan transaction was therefore illegal and void.

In arguing the appellant's grounds of appeal Mr. Segaram firstly attacked the Judge's finding of fact that Menaka and her agent were not aware until the hearing of the provisions of sec. 8(b) and (c) of the Moneylenders Ordinance in the following manner. The burden is on them to show that they were not aware of those provisions. There was no evidence produced by them to show that. They also could not be heard to say that they were ignorant of the law. On the other hand, Ng gave evidence of his ignorance of the existence of those provisions. Mr. Segaram also stressed the principle that there was an obligation on moneylenders to know the provisions of the Moneylenders Ordinance and to observe their provisions. In the circumstances the learned Judge should have concluded that both Menaka and Manickam Chettiar were aware that the provisions of sec. 8 were violated at the time when the two documents were executed.

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Counsel went on to argue that the learned Judge was right that the transactions were illegal and void but was wrong when he came to the conclusion that the provisions of sec.66 of the Contracts Ordinance applied to those transactions.

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I will first deal with the arguments of Mr. Palasuntharam, counsel for Menaka that the trial Judge was wrong in holding that the provisions of the Moneylenders Ordinance had been contravened and further that if that was so, such contravention had not rendered the transactions illegal and void. He argued it in this manner. Firstly, Menaka had not in fact entered into the loan transaction in her name alone, as shown by the cheque, the receipts and the accounts, which all shows that the firm was the lender. Secondly, the employment of the name of Menaka and not of the firm in the memorandum under sec.16 of the

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Moneylenders Ordinance and in the memorandum of charge was merely with a view to complying with the provisions of the Land Code which did not permit a charge to be made in favour of a firm. (See sec.10 and 47 of the Land Code.) I am inclined to agree with counsel that on the evidence produced it could be argued successfully that Menaka was in fact carrying on the business in the name of AR.PR.M. Firm but with respect to counsel I cannot agree with him that the provisions of sec. 8(c) had not been contravened. Sec. 8(c) clearly states that if any person in the course of business as a moneylender enters as principal or agent into any agreement with respect of any advance or repayment of money, takes any security for money otherwise than in his authorised name, he shall be guilty of an offence under the Ordinance. It cannot be disputed that the authorised name of the moneylender in this case is AR.PR.M. Firm. That is stated in the application for the licence and I have no doubt it is also stated in the licence issued to the firm and that licence we assume has been all the time in the possession of either Menaka or her agent Manickam Chettiar. In reference to the point argued that the land Code would not permit an execution of a charge to be in a firm's name as chargee the answer to that is that this provision could be complied with by stating in the memorandum of charge that Menaka was the trustee or managing partner of the firm but it is essential that the name of the firm being the authorized name of the moneylender is inserted in the memorandum under sec. 16 of the Moneylenders Ordinance as lender.

Mr. Palasuntharam then went on to argue that even if the provisions of sec. 8(b) and 8(c) had been violated, and that an offence or offences have been committed thereby, that would not affect the civil aspect of the transaction in the absence of provisions in the section or elsewhere in the Ordinance to that effect as is found in sec. 18. That section requires a moneylender to keep a regular account of every loan in the manner therein prescribed and if he should fail to comply with the requirements thereof, he shall not only become disentitled to enforce any claim in relation to which the default has been made but that he also becomes guilty of an offence and liable to a fine. On the one hand, if a moneylender should fail to comply

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with the provisions of sec. 16, as for example if he obtains the signature of the borrower on the memorandum of loan before he hands the money to the borrower, he cannot enforce his contract but he commits no offence because of that. On the other hand, under sec. 28 if the moneylender when making a note under sec. 16 does not truly state or should leave blank the amount of principal or note of interest, he commits an offence under that section. I am afraid I cannot accept counsel's contention because of the provisions of sec. 24 of the Contracts Ordinance.

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That section reads as follows:-

"24. The consideration or object of an agreement is lawful, unless -

- (a) it is forbidden by law; or
- (b) it is of such a nature that, if permitted, it would defeat the provisions of any law; or
- (c) it is fraudulent; or
- (d) it involves or implies injury to the person or property of another; or
- (e) the Court regards it as immoral, or opposed to public policy.

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In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

From the above provisions the agreement in the instant case being forbidden by law is thereby void. The principle is clearly stated by Parke B. in *Cope v. Rowlands*⁽¹⁾ in the following words:-

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"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.

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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."

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10 Lord Dunedin in Whiteman v. Sadler⁽²⁾ approved the above principle laid by Parke B. and in that case the House of Lords was considering the provisions of sec. 2(1)(c) of the English Moneylenders Act 1900 which are substantially similar to our sec. 8(c). The English section reads as follows:-

20 "A money lender shall not enter into any agreement in the course of his business as a money lender with respect to the advancement 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."

30 The next question is whether sec. 66 of our Contracts Ordinance applies. I have already set out the grounds upon which counsel for Ng argued before us that sec. 66 could not apply to this case. In deciding this question in favour of Menaka the learned Judge made two findings of fact namely, both parties were not aware of the illegality at the time of the execution of the documents and it was only discovered when the statement of defence was filed.

40 Counsel for Ng argued before us that there was evidence upon which the court could come to the conclusion that Ng was not aware of the illegality until later because Ng himself swore to that fact before the learned trial Judge. On the other hand, there was no evidence to show that Menaka or Manickam were equally ignorant. In my opinion the question of knowledge is a question of fact which the trial Judge was entitled to draw from the circumstances of the case. The man who could come and give evidence on behalf of Menaka is Manickam Chettiar who is now unfortunately dead. In my view the transaction in question was an open and honest transaction. The relevant documents were prepared by a solicitor who appeared to be so concerned with complying with

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the provisions of the Land Code that he overlooked the provisions of sec. 8 of the Money-lenders Ordinance. It is obvious from the facts of the case that Menaka would have gained nothing from all this. I would therefore with respect support the learned Judge's finding that neither Menaka nor Manickam Chettiar was aware of the illegality at the time of the execution of the documents.

As to the effect of sec. 66, the learned trial Judge cited the following passage from the judgment of Chandra Reddy C.J. in Kanuri Sivaramakrishnaiah v. Vemuri Venkata Narahari Rao(3):

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"It is manifest that in order to invoke this section, the invalidity of the contract or agreement should be discovered subsequent to the making of it. This cannot be taken advantage of by parties who knew from the beginning the illegality thereof. It only applies to a case where one of the parties enters into an agreement under the belief that it was a legal agreement, i.e. without the knowledge that the agreement is forbidden by law or opposed to public policy and as such illegal.

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The effect of section 65, (s.66 of the Malayan Contracts Ordinance) is that, in such a situation, it enables a person not in pari delicto to claim restoration since it is not based on an illegal contract but dissociated from it. That is permissible by reason of the section because the action is not founded on dealings which are contaminated by illegality. The party is only seeking to be restored to the status quo ante."

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In the circumstances, I would say that the Judge was right that Ng should restore the advantage he had received by returning the amount he received from Menaka. That is to say Ng has to return \$19,400/- to Menaka.

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Mr. Palasuntharam, however, argued that the learned Judge should have awarded interest. He pointed out in the case of Harnath Kaur v. Indar

Bahadur Singh⁽⁴⁾ the Privy Council awarded interest at the rate of 6% from the date of the institution of the suit in that case. I agree.

In the circumstances the judgment of the trial Judge should be confirmed but with the amendment that there should be a further order directing Ng to pay interest at the rate of 6% from the date of the institution of the suit. In my opinion there should be no order as to costs in this court.

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Sgd. Azmi bin Haji Mohamed

LORD PRESIDENT.

Kuala Lumpur,

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Suffian Ag. Chief Justice concurs.

M. Segaram (M/s. M. Segaram & Co.) for Appellant.

V. K. Palasuntharam for Respondent.

(1) (1836) 2 M. & W. 149 @ 157

(2) (1910) A.C. 514 at 526

(3) (1960) A.I.R. Andh Pra. 186 at 188

(4) I.A. Vol. L. 69.

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (Appellate Jurisdiction)

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1973

FEDERAL COURT CIVIL APPEAL NO. 90 OF 1972

Between

Ng Siew San ... Appellant

And

Menaka (wife of
M. Deivarayan) ... Respondent

(In the Matter of Kuala Lumpur High Court 10
Originating Summons No. 59 of 1971

Between

Menaka (wife of
M. Deivarayan) ... Applicant

And

Ng Siew San ... Respondent)

Coram: Azmi, L.P.
Suffian, F.J.
Ong Hock Sim, F.J.

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I have had the advantage of reading the judgment of the Lord President with whom Suffian F.J. concurs. With respect, I disagree.

At the risk of being repetitious, I would like to state the facts once again, though the Lord President has already set them out in his judgment.

The respondent had applied for an order for sale by public auction, under section 256 of the National Land Code, of six parcels of land charged to her. This was resisted by the appellant who alleged breaches or contraventions of sections 8, 16, 18, 19 and 21 of the Moneylenders Ordinance (No. 42 of 1951). At the hearing, the appellant

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abandoned all his other defences and relied solely on section 8. He admitted that he did borrow the money and still owed the principal sum of \$20,000/- plus accrued interest, but he "refused to pay because of violation of legislation," although he was not aware of the illegality until after the commencement of this litigation. It may be said here and now that there was never any allegation that the transaction was harsh or unconscionable or savouring in any way of sharp practice. There was not any dispute or misapprehension as to the amount of the loan or any of the agreed terms. There was never any doubt or misunderstanding as to the identity of the moneylender or of his business address. The transaction was conducted and concluded with the assistance of the appellant's own solicitors, Messrs. Shook Lin and Bok. The appellant was paid through his solicitors the sum of \$20,000/- by a crossed cheque drawn in their favour upon the account of "AR.PR.M. Firm." All relevant documents, receipts and entries in books of account relating to this loan appeared under the name of "AR.PR.M. Firm" of 30 Leboh Ampang. The appellant had had no less than six dealings with the respondent.

On January 11, 1965 the respondent lent the appellant \$20,000/- bearing interest at the rate of 12% per annum on the security of a charge over six parcels of land executed by the appellant in her favour. Both the note of memorandum of the loan contract and the charge were executed, on the part of the respondent as lender and chargee, by her attorney Manickam Chettiar on her behalf. At all relevant times, the respondent and another moneylender, her brother-in-law Chockalingam, were partners carrying on business as moneylenders under the name or vilasam of AR.PR.M. Firm. Manickam Chettiar died in India some time in 1970. Chockalingam was never resident in Malaya, having visited this country only twice in 1963 or 1964. At the time of the loan, it would seem that the respondent was away in India and the necessary documents requiring execution by her, as managing partner of the AR.PR.M. Firm had to be signed by her attorney, Manickam Chettiar, who was properly licensed to do so.

In the Court below, as well as here, it was contended that because the loan and charge were in the name of the respondent herself, instead of in

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the name of the AR.PR.M. Firm, she was carrying on business in a name other than the authorised name and taking a security for money lent otherwise than in her authorised name, thereby contravening the provisions of section 8(b) and (c). This defence, which I have no hesitation in describing as dishonest and dishonourable is based on a strained interpretation of section 8(b) and (c). Unfortunately at the hearing, respondent's counsel conceded, without argument, that there was failure to comply with the said provisions of section 8. In the result, the learned trial judge dismissed the application for sale of the charged lands. However, in respect of the appellant's application for ancillary reliefs by way of discharging the charge and delivery up of the note or memorandum of charge for cancellation he made such orders subject to repayment by the appellant of the sum of \$19,400/- representing the balance of principal without any interest accruing since January 11, 1965. To this extent, the learned judge agreed with the respondent's counsel that, notwithstanding avoidance of the charge for illegality, section 66 of the Contracts Ordinance requires that the advantage in cash ought to be restored to the other party ex aequo et bono. Against that judgment, the appellant appeals, mainly on the ground that the learned trial judge was wrong in ordering him to repay the said sum of \$19,400/- as a condition for obtaining the reliefs to which he claims he was legally entitled. I think it pertinent here to add that at the date of filing of the Originating Summons, February 13, 1971, the accrued interest due was no less than \$13,940/-. The respondent too has cross-appealed and the main ground of her cross-appeal is that the provisions of section 8(b) and (c) were inapplicable and never in fact contravened, so that there should have been an order in terms of her Originating Summons.

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The only issue for determination therefore in this appeal is whether, by taking the charge, as chargee, in her personal name, the respondent had acted in contravention of the provisions of section 8(b) and (c) of the Moneylenders Ordinance 1951, thereby rendering the charge void. If she had not, she was clearly entitled to the reliefs sought, but denied her by the High Court.

It is necessary here to reproduce section 8 in full. It reads:

"8. If any person -

- (a) takes out a licence in any name other than his true name; or
- (b) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, carries on business as such in any name other than his authorized name or at any other place than his authorized address or addresses; or
- (c) in the course of business as a money-lender enters as principal or agent into any agreement with respect to any advance or repayment of money or takes any security for money otherwise than in his authorized name,

he shall be guilty of an offence under this Ordinance and shall be liable to a fine not exceeding one thousand dollars and for a second or subsequent offence shall be liable to the fine aforesaid or to imprisonment for a term not exceeding twelve months and an offender being a company shall for a second or subsequent offence be liable to a fine not exceeding five thousand dollars:

Provided that a moneylender who is not, or in the case of a firm none of the partners of which are, ordinarily resident in the Federation may without being guilty thereby of an offence carry on business in any State without holding a licence if he carries on such business solely through an agent duly licensed under this Ordinance to carry on such business in such State under the name of such moneylender."

Despite counsel's concession of contravention of section 8(b) and (c), it should be kept in mind that where such excessive legalism or a strained interpretation as leads to a law enacted for the protection of borrowers having the result of victimising and oppressing moneylenders carrying on business in an irreproachable manner, the case

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is one which calls for interference in the interests of justice. As Lord Atkin said in Societe Belge de Banque v. Girdhari Lal(1):

"Their Lordships find it difficult to believe that there was not some misunderstanding on appeal as to the acceptance by counsel for the Bank of all the trial judge's findings. But if counsel did accept such a finding, it could only amount to an admission of a point of law which cannot be binding upon a Court: and their Lordships do not consider themselves precluded from deciding the rights of the parties on a true view of the law."

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Appellant's counsel cited a number of authorities all decided in respect of Section 2(1)(b) and (c) of the English Moneylenders Act, 1900. I say here, as I shall have occasion to reiterate, that this is a question involving construction, and as Lord Warrington of Clyffe said in Barrell v. Fordree(2):

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"In my opinion, the safer and more correct course of dealing with a question of construction is to take the words themselves and arrive, if possible, at their meaning without, in the first instance, reference to cases. Of course, if a case is found which is in conflict with the opinion so formed then it must be dealt with."

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As Appellant's counsel has relied on authorities dealing with section 2(1) of the 1900 Act, it may be convenient to reproduce the section. It reads:

"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

(1) AIR 1940 P.C. 90, 91.

(2) (1932) A.C. 676, 682.

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 moneylender; 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) (not relevant.)"

It is immediately apparent that section 2(1)(a) is the limb upon which all the other paragraphs hang, and there can be no construction of paragraphs (b), (c), or (d) without reference to (a), which require, in the first instance, that a money-lender "shall register himself ... under his own name or usual trade name and in no other name." I can find no provision in our licensing regulations enacted in section 5 providing that a moneylender applying for his annual licence shall also state the name under which he desires or intends to carry on his business as moneylender. Section 2 of our Ordinance defines "authorised name" to "mean the name under which a money-lender is authorised by a licence granted under this Ordinance to carry on business." I have said that there is no provision for "acquiring" an authorised name. Section 6(1) is directory, not mandatory, that every licence.....shall show his true name and the name under which, and the address at which, he is authorised by the licence to carry on business as such, and in the case of an agent in addition the true name of the principal, whether an individual or a firm, on whose behalf

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such business is carried on, and no licence shall authorise a moneylender to carry on business under any name except -

(a) his true name or in the case of an agent the true name of the principal on whose behalf such agent carries on business;
or

(b) the name of a firm in which he is a partner or of which he is an agent; or

(c) a business name, whether of an individual or of a firm in which he is a partner or of which he is an agent, under which he or the firm or in the case of an agent his principal has been registered under the Registration and Licensing of Businesses Ordinance, 1953.

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Subsection (2) would seem to be directly in conflict with section 2 as to the "authorised name" as it peremptorily enacts:

'(2) A licence taken out in a name other than the moneylender's true name shall be void"

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Our Ordinance had been badly drafted. It took bits and pieces of the 1900 and 1927 English Moneylenders' Acts. Section 15 of the 1927 Act defines "authorised name" as the name a money-lender is authorised by a certificate under section 2(3) to carry on the business of a money-lender. This certificate is a pre-requisite to a money-lender's excise licence under section 1 of the Act. In our Ordinance, "excise money-lender's licence" and "certificate" are treated as synonymous. Subsection 6(2) of our Ordinance is similar to a proviso to section (1) of the 1927 Act, which, as can be seen, bears a different meaning. It reads:

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"Provided that a moneylender's excise licence shall be taken out by a moneylender in his true name and shall be void if it be taken out in any other name but every money-lender's licence shall also show the moneylender's authorised name."

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Here the respondent did in fact take out a

licence in her true name. I can find nothing in the provisions of the Ordinance itself or in the rules made by the Minister thereunder, which makes the use of the true name illegal and requires that the authorised firm name must be used in lieu of the moneylender's true name under pain of the transaction being rendered void and unenforceable. Subsection (6) of section 5 only empowers the Minister to make rules prescribing (1) the fee to be paid (2) the procedure to be followed in making application and (3) the information to be furnished upon such application. Does it extend to empowering the Minister to prescribe an "authorised name" directly opposed to the provisions of section 6(2)?

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I agree therefore with the submission of respondent's counsel that there has been no contravention of section 8(b) and (c) which are wholly inapplicable.

Even if there had been, it is my view that non-compliance was not fatal to the respondent's claim. It must be remembered that at the relevant time, Manickam Chettiar held his licence as agent of the AR.PR.M. Firm, of which firm the true name of his principals were Menaka wife of Deivarayan and A.L.Chockalingam, who gave him their respective powers of attorney. Was the absence of words linking the AR.PR.M. Firm in the note or memorandum and in the charge such a fatal defect as to invalidate the whole transaction? First, it must be observed that, under section 5(3) the licence taken out by the respondent as managing partner of the AR.PR.M. Firm "shall be deemed to be a licence to the firm" and every active resident partner "shall be deemed to hold a licence". Secondly, section 6(1) provides that "every licence granted to a moneylender shall show his true name and the name under which his is authorised by the licence to carry on business as such and no licence shall authorise a moneylender to carry on business under any name except (a) his true name or in the case of an agent the true name of the principal on whose behalf such agent carries on business; or (b) the name of a firm in which he is a partner or of which he is an agent"

The respondent was not carrying on the business of the AR.PR.M. Firm in any hole-and-corner fashion. Her licence indisputably was issued in full compliance with section 6(1)(a) and (b) and so was the licence held by her attorney Manickam Chettiar.

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In the respondent's own licence, her true name was set out as Managing partner and the firm name under which her business was carried on. In every respect the licence made a full and frank disclosure of the required particulars so that no borrower taking a loan from her could be under any shadow of doubt that she gave the loan and executed the charge as the managing partner of the firm authorised to carry on business under the registered name of AR.PR.M. Firm. How then can it be suggested that she had failed to comply with any of the conditions of her licence - when all particulars required by section 6 to be shown on her licence were fully and truthfully set out? Thirdly, both counsel in the High Court referred only to section 8(b) and (c). Neither of them, nor the judge, referred to the provisions of section 8(a). A more important omission was to read or refer to section 6. I should point out that section 8 is enacted simply and solely to make breaches of section 6 punishable offences and lay down the maximum or limit of punishment that may be imposed. The penalty thus provided for contravention of section 6 consequently is not and cannot be inclusive of forfeiture of a sum of money which in certain cases may run to astronomical amounts.

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It was suggested by appellant's counsel that there was no difficulty in complying with section 8. All that was necessary was to append to her name some words of qualification or description. Had this been done, there could be no criticism of the validity of the charge, following Chai Sau Yin v. Kok Seng Fatt⁽³⁾. With respect, I do not agree with such an interpretation of the law which allows dishonesty to prevail in Courts set up to administer justice. Here the moneylender was obeying both the letter and the spirit of the Ordinance. "The statute" said Lord Radcliffe with reference to the Moneylenders Act of Nigeria in Kasumu v. Baba-Egbe⁽⁴⁾ "is not concerned with the vice of its content" (i.e. the loan contract) "but with the vice of the conditions under which it was made." As Lord Mersey said in Whiteman v. Sadler⁽⁵⁾:

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(3) (1966) 2 M.L.J. 54 at 56.
(4) (1956) 3 A.E.R. 266, 271.
(5) (1910) A.C. 514 at 535.

"I might let the matter rest there, but it is perhaps worth while to point out the consequences which would follow from holding otherwise. To hold otherwise would render not only this particular transaction void, but also every other transaction of money-lending which the appellants have entered into since they started in business; and would authorize every borrower from them to do that which the respondent desires to do in this case, namely, to refuse to pay back the money lent. Farwell L.J. dealt with this point and said: "The repudiation of all liability to repay even the money actually advanced is dishonest and demoralising to the borrower, but that was doubtless present to the mind of the Legislature in 1900."."

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I have said earlier that each case has to be judged upon its facts. I have set out the surrounding circumstances attendant upon the transaction in question. I do not think that any one with any conscience can say that the appellant was in any way misled as to the nature of the transaction or the person with whom he was dealing. I do not think also that it can be said that the respondent had taken any undue advantage or failed to comply with provisions which go to the root of the legislation. Above all, the provision of a specific penalty for contravening section 6 does not, as do other provisions, provide for unenforceability or non-entitlement to sue. (See sections 15, 16, 18(2) and 27(2)). The wording of section 18(2) is significant. It says that a person not complying with section 18 "shall not be entitled to enforce any claim in respect of the transaction in relation to which default shall have been made". (See Nasib Singh v. Jamilah binti Abd. Hamid(6)). It goes further to say that "he shall also be guilty of an offence under this Ordinance". In my view section 8 is purely a penal provision. In the absence of words that non-compliance with section 8, besides being an offence, renders the contract or security unenforceable, I cannot see how the Court can make any order resulting in forfeiture of more than \$33,000/- which rightfully belongs to the respondent.

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Lord Macnaghten in Whiteman v. Sadler (cit.)
at page 520 on section 2(1)(c) asked:

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"What is the consequence of holding that the registration, on which the defendants rely, is not in accordance with the requirements of the Act? Sect. 2, sub-s.1(c), provides that a money-lender "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." Farwell L.J., from whom the other members of the Court did not differ, held that if the registered name was placed on the register in contravention of the Act, there was "no name registered at all within the Act."

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"No one questions the principle to which Farwell L.J. refers. The application of the principle, however, in any particular case must depend on the provisions of the Act of Parliament under consideration, and the circumstances of that case.

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I must confess that I have felt considerable difficulty in coming to a conclusion on this point, but on the whole I am of opinion that the bill of sale taken in the registered name of the money-lenders is not void, although the name was, I think, improperly registered.

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I think the true view of the Act is this: The Act requires a money-lender, as defined by the Act, to register himself as a money-lender, in accordance with regulations under the Act, at an office provided for the purpose by the Commissioners of Inland Revenue. That is s.2, sub-s.1(a). By s.3, sub-s.1, the Commissioners are to "make regulations respecting the registration of money-lenders the form of the register, and the particulars to be entered therein." A money-lender registered under these regulations is to carry on the money-lending business in his registered name and in no other name. That is s.2, sub-s.1(b).

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He is not to enter into any agreement in the course of his business otherwise than in his registered name. That is s.2, sub-s.1(c). It would be a strong thing to hold that a person whose name has been placed on the register by the officers of a public department, in conformity with regulations purporting to be issued under the authority of Parliament, becomes liable to fine and imprisonment, and the absolute loss of all his contracts, not for trading without registration but for trading in a registered name, registered, I admit, wrongly, but registered by the authorised exponents of the requirements of the Act and the statutory custodians of the register. If, in violation of the plain words of the Act, a money-lender trades without being registered at all, or being registered trades in another name, he is very properly left to the mercy of any one who chooses to attack him, and his contracts are rightly avoided. But if he is registered by the Commissioners and registered improperly the fault does not lie with him alone. The Commissioners are at least equally to blame. It was said that a money-lender registers himself; the Commissioners have to accept the entry proposed, if it is not in contravention of their published regulations. I do not think that is what the Act meant. The Commissioners have important duties cast upon them. In a great measure the execution of the Act is placed in their hands. Their regulations ought to be clear and explicit, and the forms of application for registration issued by them ought not to afford room for evasion.

By a wise foresight, or a fortunate chance, the Act has not left persons entirely unprotected who may be misled or not guided aright by the directions issued by the Commissioners. In the case of an alleged infringement of sub-s.1(a), the sub-section with which the Commissioners are mainly concerned, no prosecution can be instituted except with the consent of the law officers. No such provision is made with regard to (b) or (c). This seems to me to show that what the Act meant to strike at in (c) was the case of a person actually registered by the Commissioners

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contracting otherwise than in his registered name, and that, so long as his name remains on the register, his contracts in that name are not to be held void, or his action in making contracts in that name punishable by fine and imprisonment.

I venture to hope that the Commissioners of Inland Revenue will issue regulations which may be a guide to persons proposing to register, and not an occasion for stumbling, and that they will repair the error they have committed by removing, on proper notice, names wrongly registered, and taking care in future that, so far as in them lies, the requirements of the Act shall be complied with.

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In this way, and by these means, the Act, it may be hoped, will regain power, and at the same time command respect. As administered by the Board of Inland Revenue it loses half its virtue. As construed by the Court of Appeal it leads to a result which one of the learned judges of that Court describes as "dishonest and demoralizing."

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I think the action should be dismissed with costs."

Lord Dunedin in the same case said at page 527:

"The upshot of the matter seems to me that each statute must be judged of by itself. Now in the present statute we find a direct prohibition as to contracts in s.2(1)(c). "A money-lender 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."

30

It seems to me that express enactment shuts the door to further implication. "Expressio unius est exclusio alterius."

40

I come therefore to the conclusion that the contract here was only void if it was

struck at by the prohibition in s.2(1)(c). Was it so struck at? It is said that because we hold the registration to have been an improper registration therefore it was no registration. I do not think so. I think registered name means de facto registered name, and that it would be contrary to all justice to penalize the appellants for what was really a mistake of the Inland Revenue.

In the
Federal Court

No.17

Judgment of
Ong Hock Sim,
F.J.

6th October
1973

(continued)

10 The appellants had a registered name, and I think the statute sought only to prohibit dealings in a name which was not registered at all."

We should adopt the line taken in that case. By accepting the contention of the appellant, we would in effect be penalising the respondent for defective draftsmanship of our Ordinance.

20 Our Ordinance by its provisions does not enable the moneylender by his licence to do any act except in accordance with section 6(1)(a) "in his true name". This was done here. Further the provisions of the Land Code did not permit registration in the name of a partnership of firm (see Chin Cheng Hong & Anor. v. Hameed & Ors. (7)). Section 10 and 47 did not permit the charge in this case to be taken in the "authorised name". As her partner, Chockalingam was a non-resident and hence disqualified on that ground by the provisions of section 5(2), the charge could only
30 be taken in the name of the respondent herself as chargee, and it is impossible, in my opinion, to say that, by so doing she was carrying on business otherwise than in the authorised firm name and on the firm's account; on this point the books provided unimpeachable evidence of the truth.

40 I am of opinion that it was not possible for the respondent to comply with section 8(b) and (c) in the absence of provision in the Ordinance for an "authorised name". There was compliance however with the Ordinance in that she held a licence to carry on moneylending business in her true name and with the Land Code in respect of the registration of the charges in her own name.

(7) (1953) M.L.J. 135 at 136.

In the
Federal Court

—
No.17

Judgment of
Ong Hock Sim,
F.J.

6th October
1973

(continued)

I would therefore dismiss the appeal, allow the respondent's cross-appeal and set aside the order of the Court below. I would give the respondent all the reliefs prayed for in Selangor Originating Summons No. 198/64, with costs both here and in the Court below. The deposit of the appellant will be paid out to respondent to account of her taxed costs.

(sd.) TAN SRI DATO' JUSTICE H.S.ONG

(ONG HOCK SIM)

10

JUDGE
FEDERAL COURT

Kuala Lumpur,

6th October, 1973.

Solicitors:

Mr. M. T. Segaram of M. Segaram & Co., Kuala Lumpur for Appellant.

Mr. V. K. Palasuntharam of V.K. Palasuntharam, K.L. for Respondent.

Salinan yang di-akui benar.

20

(Sgd.) Illegible. 6.10.73

Setia-usaha kepada Hakim

Mahkamah Persekutuan

Malaysia
Kuala Lumpur.

No. 18

ORDER

In the
Federal Court

No.18

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (Appellate Jurisdiction)

Order

6th October
1973

FEDERAL COURT CIVIL APPEAL NO.90 OF 1972

BETWEEN

Ng Siew San ... APPELLANT.

AND

10 Menaka wife of
M. Deivarayan ... RESPONDENT.

(In the matter of Originating Summons No.59
of 1971 in the High Court in Malaya at Kuala
Lumpur

BETWEEN

Menaka wife of ... APPLICANT

AND

Ng Siew San ... RESPONDENT).

20 CORAM: AZMI, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA
SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA;
ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA.

IN OPEN COURT

THIS 6TH DAY OF OCTOBER, 1973.

O R D E R

30 THIS APPEAL coming on for hearing on the 20th
of February, 1973 and on the 22nd of February, 1973
in the presence of Mr. M. Segaram of Counsel for
the Appellant abovenamed and Mr. V.K. Palasuntharam
of Counsel for the Respondent abovenamed AND UPON
READING the Record of Appeal and the Notice of
Cross-Appeal of the Respondent herein AND UPON
HEARING the Counsel as aforesaid:

In the
Federal Court

No.18

Order

6th October
1973

(continued)

IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming for Judgment this day in the presence of Mr. M. Segaram of Counsel for the Appellant and Mr. V.K. Palasuntharam of Counsel for the Respondent:

IT IS ORDERED that the Appeal of the Appellant be and is hereby dismissed:

AND IT IS FURTHER ORDERED that the Cross-Appeal of the Respondent be and is hereby dismissed:

10

AND IT IS FURTHER ORDERED that the Order of the Honourable Mr. Justice Mohd. Azmi given on the 12th day of August, 1972 be and is hereby affirmed and Amended to include whereby the Appellant do also pay to the Respondent interest at the rate of 6% per annum on the sum of \$19,400.00 (Dollars Nineteen thousand four hundred only) from 17th February, 1971:

AND IT IS FURTHER ORDERED that there be no order as to Costs of the Appeal and Cross-Appeal:

20

AND IT IS LASTLY ORDERED that the sum of \$500.00 (Dollars Five hundred only) deposited by the Appellant as security for Costs of this Appeal be refunded to the Appellant.

GIVEN under my hand and the Seal of the Court this 6th day of October, 1973.

(Sgd.) E. E. Sim

(L.S.)

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA,
KUALA LUMPUR.

30

No.19

Notice of Motion to Appoint Representative to Estate of Ng Siew San deceased

IN THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.90 OF 1972

In the matter of appointing a person to represent the estate of Ng Siew San now deceased.

BETWEEN

10 Menaka wife of M. Deivarayan ... Applicant

AND

Lum Kum Chum as Executrix of the Last Will of Ng Siew San now deceased ... Respondent

(In the matter of Federal Court Civil Appeal No.90 of 1972

20 BETWEEN

Ng Siew San ... Appellant

AND

Menaka wife of M. Deivarayan ... Respondent)

(In the matter of Kuala Lumpur High Court Originating Summons No. 59 of 1971

BETWEEN

Menaka wife of M. Deivarayan ... Applicant

30 AND

Ng Siew San ... Respondent.)

In the Federal Court

No.19

Notice of Motion to appoint representative to estate of Ng Siew San deceased

16th December 1973

In the
Federal Court

NOTICE OF MOTION

No.19
Notice of
Motion to
appoint rep-
resentative
to estate of
Ng Siew San
deceased
16th December
1973
(continued)

TAKE NOTICE that the Court will be moved at 9.30 o'clock in the forenoon on Monday the 18th day of February 1974, or so soon thereafter as counsel can be heard, by counsel for Menaka wife of M. Deivarayan the Applicant abovenamed for an Order:-

(a) that Lum Kum Chum be appointed to represent the estate of the abovenamed Ng Siew San now deceased in Federal Court Civil Appeal No.90 of 1972 and in the proceedings which are being taken by the Applicant to appeal to His Majesty the Yang Dipertuan Agung and/or in the proceedings to be taken to appeal as aforesaid and/or in such appeal;

10

(b) alternatively to (a) above, that some other person whom the Court deems fit and proper be appointed to represent the estate of the abovenamed Ng Siew San now deceased in Federal Court Civil Appeal No.90 of 1972 and in the proceedings which are being taken by the Applicant to appeal to His Majesty the Yang Dipertuan Agung and/or in the proceedings to be taken to appeal as aforesaid and/or in such appeal;

20

9 (c) that the proceedings shall be carried on between the Applicant and the person appointed under (a) or (b) above;

(d) that the appointment under (a) or (b) above be deemed to have been made with effect from the 14th day of November 1973;

30

(e) alternatively to (d) above, that the time for leave to appeal to His Majesty the Yang Dipertuan Agung from the decision of the Federal Court of Malaysia given on the 6th day of October 1973 be extended till the expiry of one month or such other period as the Court may state in such Order from the date of the Order extending time;

(f) that the description "appointed by Order of the Federal Court dated represent the estate of Ng Siew San now deceased" be added in respect of the person appointed under (a) or (c) above in the title of Federal Court Civil Appeal No. 90 of 1972 and in the title of such proceedings or of such appeal to His Majesty

40

the Yang Dipertuan Agung;

(g) that the costs of and incidental to this motion be costs in the cause; and

(h) for such other and further relief as the Court may deem fit.

Dated this 16th day of November 1973.

(Sgd.) V.K. Palasuntharam

(Sgd.) E. E. Sim

Solicitor for Applicant.

Chief Registrar,
Federal Court of Malaysia.
22.1.74

10

In the
Federal Court

No.19

Notice of
Motion to
appoint re-
presentative
to estate of
Ng Siew San
deceased

16th November
1973

(continued)

This Notice of Motion is taken out on behalf of the Applicant abovenamed by her solicitor Mr. V. K. Palasuntharam whose address for service is Room 204, Bangunan Cho Tek (2nd Floor), 135 Jalan Tuanku Abdul Rahman, Kuala Lumpur.

The Application in this Notice of Motion will be supported by the Affidavit of N.AR.K. Nachiappa Chettiar son of Kasiviswanathan Chettiar affirmed to on the 16th day of November 1973 at 10.35 a.m. and filed herein.

20

To:

Lum Kum Chum as Executrix of the Last Will of
Ng Siew San now deceased,
No.446, Batu Tujoh,
Ulu Klang,
Kuala Lumpur.

Filed this 16th day of November 1973.

(Sgd.) E. E. Sim

Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

In the
Federal Court

No. 20

No.20

Affidavit of
Nachiappa
Chettiar in
support of
No.19

Affidavit of Nachiappa Chettiar
in support of No.19

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.90 OF 1973

16th November
1973

In the matter of appointing a person to
represent the estate of Ng Siew San now
deceased.

BETWEEN

10

Menaka wife of
M. Deivarayan ... Applicant

AND

Lum Kum Chum as
Executrix of the
Last Will of
Ng Siew San now
deceased ... Respondent

(In the matter of Federal Court Civil
Appeal No.90 of 1972

20

BETWEEN

Ng Siew San ... Appellant

AND

Menaka wife of
M. Deivarayan ... Respondent.)

(In the matter of Kuala Lumpur High
Court Originating Summons No.59 of 1971

BETWEEN

Menaka wife of
M. Deivarayan ... Applicant

30

AND

Ng Siew San ... Respondent.)

A F F I D A V I TIn the
Federal Court

No.20

Affidavit of
Nachiappa
Chettiar in
support of
No.1916th November
1973

(continued)

I. N. AR. K. Nachiappa Chettiar son of Kasiviswanathan Chettiar of full age residing at No.30 Leboh Ampang, Kuala Lumpur solemnly and sincerely affirm and say as follows:-

1. I am the attorney of the Applicant the above-named Menaka wife of M. Deivarayan.

2. I am duly authorised to make this affidavit.

10 3.(a) The Applicant's solicitor has received a signed copy of a letter dated 12th November 1973 from Syarikat M. Segaram the solicitors for the Appellant abovenamed addressed to the Chief Registrar, Federal Court, Malaysia stating that their client the Appellant has died on 30th October 1973. A photo-copy of the said copy is an exhibit hereto marked KN1.

20 (b) The Applicant's solicitor has also received a letter dated 13th November 1973 addressed to him from the said Syarikat M. Segaram stating that the latter were forwarding therewith a copy of the Will made by the late Mr. Ng Siew San appointing Madam Lum Kum Chum of No.446, Batu Tujoh, Ulu Klang, Kuala Lumpur to be his Executrix. A photo-copy of the said letter dated 13.11.1973 is an exhibit hereto marked KN2. A photo-copy of the said copy of the said Will which copy shows that the said Will was dated 10.2.1973 is an exhibit hereto marked KN3.

30 4. The Applicant is desirous of appealing to His Majesty the Yang Dipertuan Agung against such part only of the final judgment and Order of the Federal Court of Malaysia dated the 6th day of October 1973 as dismisses or has the effect of dismissing the cross-appeal of the Applicant in Federal Court Civil Appeal No.90 of 1972 and of not awarding costs to the Applicant in this Court or in the High Court or alternatively against the final judgment and Order of the Federal Court of Malaysia dated the 6th day of October 1973 in Federal Court Civil Appeal No. 90 of 1972.

40 5. The Applicant's cause of action survives the death of the Appellant. By reason of the death of the Appellant a change or transmission of interest and liability has been caused.

In the
Federal Court

—
No.20

Affidavit of
Nachiappa
Chettiar in
support of
No.19

16th November
1973

(continued)

6. It is just and proper that a fit and proper person should be appointed to represent the estate of the Appellant abovenamed in the said Federal Court Civil Appeal No.90 of 1972 and in the proceedings that the Applicant is taking to appeal and/or in the proceedings that the Applicant intends to take to appeal and in her appeal to His Majesty the Yang Dipertuan Agung.

7. In view of the said alleged Will of the Appellant abovenamed appointing Madam Lum Kum Chum to be the sole Executrix of the said Will it may be fit and proper that the Court be pleased to appoint the said Madam Lum Kum Chum to represent the estate of the Appellant abovenamed in the said Federal Court Civil Appeal No.90 of 1972 and in the proceedings which are being taken by the Applicant to appeal as aforesaid to His Majesty the Yang Dipertuan Agung and/or in the proceedings to be taken to appeal as aforesaid and/or in such appeal by the Applicant or that such other person as the Court may deem fit and proper be appointed to represent the estate of the Appellant in the said Federal Court Civil Appeal No.90 of 1972 and in such proceedings and/or in such appeal as aforesaid.

10

20

Affirmed to at Kuala Lumpur this 16th day of November 1973 at 10.35 a.m. } N.A.R.K. Nachiappa Chettiar

Before me,

30

(Sgd.) W. P. SARATHY P.P.N.

PERSUROHJAYA SUMPAH

Commissioner for Oaths.

This Affidavit is filed on behalf of the Applicant abovenamed.

125.

SYARIKAT M. SEGARAM

KN 1

Advocates & Solicitors

17 & 19 Jalan Silang,
Kuala Lumpur.

Our Ref: MTS/1024/71

12th November, 1973

The Chief Registrar,
Federal Court,
Malaysia,
High Court Bldg.,
KUALA LUMPUR.

In the
Federal Court

No.20

Affidavit of
Nachiappa
Chettiar in
support of
No.19

16th November
1973

(continued)

10 Dear Sir,

Ref: Federal Court Civil Appeal
No. 90 of 1972

We have the honour to refer your attention to the above matter and to inform you that our client the Appellant in the above case is dead and he died on the 30th of October, 1973.

Yours faithfully,

(Sgd.) Illegible

ms/mk.

20

c.c. To:-
M/s. V.K. Palasuntharam,
Advocates & Solicitor,
Choo Teck Building,
Jalan Tuenku Abdul Rahman,
KUALA LUMPUR.

RECEIVED 12 Nov. 1973

30

This is the exhibit marked KN1 referred to in the Affidavit of N.AR.K. Nachiappa Chettiar son of Kasiviswanathan Chettiar affirmed to before me this 16th day of November 1973.

(Sgd.) W.P. SARATHY P.P.N.

PERSUROHJAYA SUMPAH

Commissioner for Oaths.

In the
Federal Court

KN 2

No.20

Affidavit of
Nachiappa
Chettiar in
support of
No.19

16th November
1973

(continued)

SYARIKAT M. SEGARAM

Advocates & Solicitors

17 & 19 Jalan Silang,
Kuala Lumpur.

Our Ref: MTS/1024/71

13th November, 1973.

Messrs. V.K. Palasuntharam,
Advocate & Solicitor,
Bangunan Choo Teck,
Jalan Tuanku Abdul Rahman,
KUALA LUMPUR.

Dear Sirs,

Re: Federal Court Civil Appeal
No. 90 of 1972

10

We refer to the conversation between your
Mr. Palasuntharam and our Mr. M. Segaram and
forward herewith a copy of the Will made by the
late Mr. Ng Siew San appointing Madam Lum Kum Chum
of No.446, Batu Tujoh, Ulu Klang, Kuala Lumpur to
be his Executrix.

Kindly acknowledge receipt.

Yours faithfully,

20

(Sgd.) Illegible

ms/mk.

c.c. To:-

The Chief Registrar,
Federal Court Malaysia,
High Court Building,
KUALA LUMPUR.

RECEIVED 13 Nov 1973

This is the exhibit marked KN2
referred to in the Affidavit of N.AR.K.
Nachiappa Chettiar son of Kasiviswanathan
Chettiar affirmed to before me this 16th
day of November 1973.

30

(Sgd.) W. P. SARATHY P.P.N.

PERSUROHJAYA SUMPAH

Commissioner for Oaths.

W I L L

Ng Siew San @ Ng Sna Seng (I.C.No.1491994) of No.446, Batu Tujoh, Ulu Klang, Kuala Lumpur hereby Revoke all former Wills and Codicils made by me and declare this to be my last Will.

In the
Federal Court

No.20

Affidavit of
Nachiappa
Chettiar in
support of
No.19

16th November
1973

(continued)

- 10 1. I appoint my Second Wife Lum Kum Chum (I.C.No. 1491993) (also of No.446, Batu Tujoh, Ulu Klang, Kuala Lumpur) to be the sole Executrix and Trustee of this my Will (hereinafter called 'My Trustee').
2. I DEVISE and BEQUEATH my freehold land and property known as No.446, Batu Tujoh, Ulu Klang, Kuala Lumpur and held under C.T. No. 13110 for Lot No. 446, in the Mukim of Ulu Klang, in the District of Kuala Lumpur to my Second Wife, Lum Kum Chum absolutely and I direct that any sum payable under Charge Presentation No. 93289 in the said land bequeathed shall be paid out of my Estate.
- 20 3. I DEVISE and BEQUEATH my Lands held under E.M.R. 3517 and 3518 for Lot No. 4522 and 4523, in the Mukim of Ulu Bernam in the District of Ulu Selangor and Lands held under Grant Nos. 7695, 8243, 10624 and 18012 for Lots 125, 114, 114A, 327 in the Township of Tanjong Malim in the District of Batang Padang and Lands held under C.T. Nos. 12866, and 12867 for Lots 321 and 323 in the Township of Tanjong Malim in the District of Batang Padang and my 120/576 Shares in Land held under C.T. 5558 and 6468 for Lots 990 and 1308 in the Mukim of Cheras in the District of Kajang UNTO my Trustee UPON TRUST to convey to all my children from my Second Wife upon my Infant Child Ng Beng Thiam attaining the age of twenty one (21), in equal shares.
- 30
- 40 4. I DEVISE and BEQUEATH all my real and personal Estate wheresoever and whatsoever not otherwise disposed of this my Will Unto my Trustee UPON TRUST to sell, call in and convert the same into money at such time or times and in such manner as she shall think fit with power to postpone the sale, calling in and conversion of the whole or any part or parts thereof for so long as she shall think proper without being responsible for loss.

In the
Federal Court

No.20

Affidavit of
Nachiappa
Chettiar in
support of
No.19

16th November
1973

(continued)

- 5. My Trustees shall out of the moneys to arise from the sale, calling in and conversion and out of my ready moneys pay my funeral and testamentary expenses and Debts including any Debts charged upon any property specifically devised or bequeathed by me and shall invest the residue of the said moneys.
- 6. Out of my residuary property left I give to each of my children from the First Wife a sum of \$1,000/- (Dollars One thousand only) each.
- 7. I DEVISE and BEQUEATH all my personal and real Estate not hereby or by any Codicil hereto otherwise dispose of unto in equal shares to all my children from my Second Wife.

10

IN WITNESS WHEREOF I have hereunto set my hand this 10th day of February, 1973.

SIGNED by the abovenamed)
 NG SIEW SAN @ NG SNA SENG as his)
 last Will in the presence of us)
 present at the same time who at)
 his request and in his presence)
 and in the presence of each)
 other have hereto subscribed)
 our names as Witnesses.)

20

NG SIEW SAN
.....

Advocate & Solicitor
Kuala Lumpur.

No. 21

AFFIDAVIT OF LUM KUM CHUM

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.90 OF 1973

In the
Federal Court

No.21

Affidavit of
Lum Kum Chum

28th January
1974

In the matter of appointing a person
to represent the estate of Ng Siew
San now deceased.

Between

10 Menaka wife of M. Deivarayan ... Applicant

And

Lum Kum Chum as Executrix of
the last will of Ng Siew San
now deceased. ... Respondent.

(In the matter of Federal Court
Civil Appeal No. 90 of 1972

Between

Ng Siew San ... Appellant

And

20 Menaka wife of M. Deivarayan ... Respondent.)

(In the matter of Kuala Lumpur High
Court Originating Summons No.59 of 1971

Between

Menaka wife of M. Deivarayan ... Applicant

And

Ng Siew San ... Respondent.)

A F F I D A V I T

I, Lum Kum Chum of full age and Malaysian
Citizen, residing at 7th Mile, Ulu Klang Road,

In the
Federal Court
—
No.21

Affidavit of
Lum Kum Chum
28th January
1974
(continued)

Kuala Lumpur make Oath and say as follows:-

1. I am the lawful widow of Ng Siew San now deceased.
2. I am also the Executrix named in the last will of the late Ng Siew San deceased.
3. On the 22nd day of January, 1974 the Kuala Lumpur High Court granted to me Probate in respect of the Estate of the said deceased but the Grant of Probate has still not been extracted.
4. I crave leave to refer to the Notice of Motion dated 16th November, 1973 and the Affidavit filed in support of the Notice of Motion all filed by the Applicants herein to appoint me to represent the estate of Ng Siew San now deceased. 10
5. I have no objections to the Court appointing me to represent the estate of the said Ng Siew San deceased.
6. The said Ng Siew San died on the 30th day of October, 1973 and a photostat copy of the Death Certificate is annexed hereto and marked as Exhibit "P.1." 20

AFFIRMED by the abovenamed at
Kuala Lumpur this 28 day of
January, 1974 at the hour
of 12.10 p.m. } Sd. Lum Kum Chum

Before me,

Sd: Sar Chiew Lim
Pesurohjaya Sumpah
Commissioner for Oaths

This is to certify that I have read, explained and translated the contents of this Affidavit to the deponent herein who declared to me that she perfectly understands the same and has made her signature in my presence. 30

Sd: Sar Chiew Lim
Pesurohjaya Sumpah
Commissioner for Oaths.

This Affidavit is filed by Messrs. M. Segaram & Co., Advocates & Solicitors, of Nos.17 & 19, Jalan Silang, Kuala Lumpur, Solicitors for the Respondent abovenamed.

A No. 043100

In the
Federal CourtBORANG N
NEGERI² TANAH MELAYU

No.21

P E R A K U A N K E M A T I A N
Ordinance Pendaftaran Beranak dan Mati, 1957Affidavit of
Lum Kum Chum28th January
1974

Daftar No. 132974

(continued)

Kawasan Pendaftaran: Selangor

Kawasan-kecil: Ulu Klang, K. Lumpur

Mama Penoh Si-mati: NG SIEW SAN @ SNA SENG

10 Jantina: Lelaki

Tarikh dan Waktu Mati: 30 October 73

Umor: 78 Tahun

Pekerjaan: Bekiya Sendiri

Bangsa: Chinese

Tempat Tinggal yang Biasa: 446 Batu 7½
Ulu Klang, K. L.

Sehab Kematian: Satkit Tua

Nama dan Kelayakan Orang yang memberitahu
Sebab Kematian: LIM KAM SENG

20 Nama: LIM KAM SENG

Pekerjaan Kenja Sendiri

Tarikh Pendaftaran: 30 October 73

**DI-PERAKUI SA-BAGAI SALINAN BENAR BAGI CHATITAN DALAM
DAFTAR KEMATIAN****BAYARAN 52****KUALA LUMPUR.**This is the Exhibit marked "P.1."
referred to in the Affidavit of Lum
Kum Chum sworn to before me this 28th
day of January 1974.

30

Sd. SAR Chiew Lim
Commissioner for Oaths
High Court, Kuala Lumpur.

In the
Federal Court

No.22

Order
appointing
representa-
tive to
Estate of
Ng Siew San
deceased

18th
February 1974

No. 22

Order appointing representative to
Estate of Ng Siew San deceased

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.90 OF 1972

BETWEEN

Ng Siew San ... Appellant

AND

Menaka wife of ... Respondent 10
M. Deivarayan ...

(In the matter of Kuala Lumpur High
Court Originating Summons No.59 of 1971

BETWEEN

Menaka wife of ... Applicant
M. Deivarayan ...

AND

Ng Siew San ... Respondent.)

CORAM: SUFFIAN, CHIEF JUSTICE, HIGH COURT, MALAYA;
GILL, JUDGE, FEDERAL COURT, MALAYSIA;
ONG HOCK SIM, JUDGE, FEDERAL COURT, 20
MALAYSIA.

IN OPEN COURT

THIS 18TH DAY OF FEBRUARY 1974

O R D E R

UPON MOTION made unto Court this day by Mr.
V. K. Palasuntharam of Counsel for the Respondent
abovenamed in the presence of Mr. M. Segaram of
Counsel for Lum Kum Chum as Executrix of the Last
Will of Ng Siew San now deceased AND UPON READING
the Notice of Motion dated the 16th day of November 1973 and the Affidavit affirmed to by N. AR. K. Nachiappa Chettiar son of Kasiviswanathan Chettiar on the 16th day of November 1973 at 10.35 a.m. and 30

the Affidavit of Lum Kum Chum affirmed to on the 28th day of January 1974 all filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED:-

In the
Federal Court

No.22

Order
appointing
representa-
tive to
Estate of
Ng Siew San
deceased

18th
February 1974

(continued)

- 10 (a) that Lum Kum Chum be and is hereby appointed to represent the estate of the abovenamed Ng Siew San now deceased in Federal Court Civil Appeal No. 90 of 1972 and in the proceedings which are being taken by the Respondent to appeal to His Majesty the Yang Dipertuan Agung and/or in the proceedings to be taken to appeal as aforesaid and/or in such appeal;
- (b) that the proceedings shall be carried on between the Respondent and the said Lum Kum Chum appointed as aforesaid;
- (c) that the abovesaid appointment be deemed to have been made with effect from the 14th day of November 1973;
- 20 (d) that the description "appointed by Order of the Federal Court dated 18th February 1974 to represent the estate of Ng Siew San now deceased" be added in respect of the person appointed as aforesaid in the title of Federal Court Civil Appeal No. 90 of 1972 and in the title of such proceedings or of such appeal to His Majesty the Yang Dipertuan Agung; and
- (e) that the costs of and incidental to this motion be costs in the cause.

30 GIVEN under my hand and the seal of the Court this 18th day of February 1974.

(L.S.) (Sgd.) E. E. Sim,

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

In the
Federal Court

No. 23

No.23

Order granting Final Leave to Appeal
to His Majesty the Yang Dipertuan Agung

Order
granting
Final Leave
to Appeal to
His Majesty
the Yang
Dipertuan
Agung

8th July 1974

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.90 OF 1972

BETWEEN

Lum Kum Chum
as Executrix of
the Last Will of
Ng Siew San now
deceased appointed by
Order of the Federal
Court dated 18th February
1974 to represent the
estate of Ng Siew San
now deceased

10

... Appellant

AND

Menaka wife of
M. Deivarayan

... Respondent

(In the matter of Kuala Lumpur High
Court Originating Summons No.59 of 1971

20

BETWEEN

Menaka wife of
M. Deivarayan

... Applicant

AND

Ng Siew San

... Respondent.)

CORAM: GILL, CHIEF JUSTICE, HIGH COURT, MALAYA;
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA;
WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

30

THIS 8TH DAY OF JULY 1974

O R D E R

10 UPON MOTION made unto Court this day by Mr. V. K. Palasuntharam of Counsel for the Respondent abovenamed in the presence of Mr. M. Segaram of Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated the 17th day of June 1974 and the Affidavit affirmed to by N.A.R.K. Nachiappa Chettiar son of Kasiviswanathan Chettiar on the 17th day of June 1974 both filed herein AND UPON HEARING counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang Dipertuan Agung against such part of the final judgment and Order of this Honourable Court dated the 6th day of October 1973 as dismisses or has the effect of dismissing the Cross-Appeal of the Respondent in Federal Court Civil Appeal No.90 of 1972, AND IT IS ORDERED that the costs of and incidental to the said motion be costs in the

20 cause.

GIVEN under my hand and the seal of the Court this 8th day of July 1974.

(Sgd.) E. E. Sim
CHIEF REGISTRAR.

In the
Federal Court

No.23

Order
granting
Final Leave
to Appeal to
His Majesty
the Yang
Dipertuan
Agung

8th July 1974
(continued)

Exhibits

EXHIBITS

P3

P3 - Certificate of Registration
under Businesses Ordinance, 1956Certificate
of Registra-
tion under
Businesses
Ordinances
1956THE REGISTRATION OF BUSINESSES ORDINANCE, 1956
1283824th November
1963To The Registrar of Businesses,
Kuala Lumpur.I/We the undersigned submit for registration the
following particulars regarding the undermentioned
business:

1. The business name (If such AR. PR. M. FIRM
name is Chinese give name
in Chinese and in English
characters.)
- (a) 2. Constitution of business PARTNERSHIP
- (b) 3. The General nature of the
business MONEY-LENDING
- (c) 4. The principal place of the business 30, AMPANG STREET,
KUALA LUMPUR.
5. The principal place of the
business in the Federation, 30, AMPANG STREET,
to which any official com- KUALA LUMPUR.
munication or legal process
may be addressed or delivered.
6. The date of commencement 4TH NOVEMBER, 1963
7. Branches of the business NIL
-
- (d) 8. The name of the partnership
business and of the asso- NIL I hereby
ciates thereof are con- certify that the
tained in a written Particulars entered
agreement dated on this form have
and made between (parties) been duly registered
a copy of which is annexed this 7th day of
to this form verified by my/ November 1963
our signature(s) or
There is no written agreement Sd.
as to the terms of the Dy. Registrar for
partnership Businesses

Dated this 4th day of November 1963

(Signed) (1) Menaka Deivarayan
(2) AL. Chockalingam

- (a) Here state "Partnership", "Sole-proprietorship,
etc.
- (b) Here state the nature of the business carried
on, e.g. "Money-lending", "Rubber Estate", etc.
- (c) Give full address wherever situated whether in
the Federation or elsewhere.
- (d) To be filled in if the business is a partner-
ship. Strike out whichever sentence is
inapplicable.

10

20

30

40

50

EXHIBITS

P3

Certificate
of Registra-
tion under
Businesses
Ordinances,
1956

4th November,
1963

(continued)

Full name or names of associate or associates	Here give all Chinese names in Chinese characters	Here state any previous names and any aliases, opposite each name in the first column	Here give Chinese names in Chinese characters	Actual Date of Birth	Sex Male or Female	Nation-ality and race	Date of entry into business	Particular office held in or nature of association with the business	Usual Residence
(1)		(2)						(3)	
MENAKA DEIVARAYAN	-	Meyyammai w/o M. Deivarayan	-	20.4.42	Female	Indian	4.11.1963	Managing Partner	26-B Circular Road, Kuala Lumpur.
AL. CHOCKALINGAM	-	Chockalingam s/o S.AL.Alagappa Chettiar	-	12.4.40	Male	Indian	4.11.1963	Partner	30 Ampang Street, Kuala Lumpur.

NOTE: If any associate is an associate of any other business, particulars of which also require registration, the name of such business or businesses must be shown either on the foot of the above page or on a schedule which should be attached to this form.

- (1) The name given must be the name by which the associate is commonly known. In the case of a Christian or non-Asian give all first or Christian names and surname; in the case of a Chinese give seh and other names, in the case of a Malay, Indian or other Asian give name of the associate and name of his father and include any personal
- (2) When any associate is known in business or in ordinary life by more than one name or by a "milk" or nickname, etc., all these must be shown as aliases.
- (3) e.g., "Partner", "Member of Joint Family", "Manager", "Sleeping Partner", etc.

VERIFICATION BY ASSOCIATES

We the undersigned confirm the accuracy of all the statements made in this form and declare that We are an associate/s of the business the name of which is AR. PR. M. FIRM.

Date: 4th November, 1963 (Signature/s)
 (1) Menaka Deivarayan
 (2) AL. Chockalingam

10 I certify that the Signature/s of Menaka Deivarayan and AL. Chockalingam were affixed to the above declaration in my presence after I had satisfied myself that the person/s so affixing such Signature(s) were in fact the person/s named in such declaration and understood the purport of such declaration.

Dated at Kuala Lumpur this 4th day of November 1963.

(Sgd.) Illegible.

"NOTE: The above verification must be attested -

20 (a) within the Federation, by a Judge, President of a Sessions Court, Magistrate, Notary Public, Justice of Peace, an Advocate or Solicitor, a Member of the Houses of Parliament or of a State Legislative Assembly or of a State Executive Council, a Commissioner for Oaths, Commissioner for Labour, a Chinese Affairs Officer, any Officer authorised by the Commissioner for Labour, a District Officer, an Administrative Officer in the State of Johore, an Assistant District Officer, or a Penghulu or Penggawa authorised by the District Officer.

30 (b) within any territory in the Commonwealth, by a Judge, President of a Sessions Court, Magistrate, Notary Public, Justice of Peace, an Advocate or Solicitor who is entitled to practise in the Courts of such territory or a Consular Officer of any territory in the Commonwealth;

(c) within any territory outside the Commonwealth, by a Notary Public, a Consular Officer or Diplomatic Officer performing consular functions of any territory of the Commonwealth".

Exhibits

P3

Certificate of Registration under Businesses Ordinance 1956

4th November 1963

(continued)

Exhibits

No. 1

Letter,
Ng Siew San
to Shearn
Delamore & Co.

11th October
1967

No. 1 - Letter, Ng Siew San to
Shearn Delamore & Co.

Ng Siew San
No.446, 0 7½ Mile
Ulu Klang Road,
Ulu Klang,
Selangor.

11th October, 1967.

Messrs. Shearn Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

10

Dear Sirs,

Charge Presentation No.107/65
Volume 204 Folio 94.

I am in receipt of your letter No.SD(K)
19776/1 dated the 5th October, 1967 written on
behalf of your client, Menaka W/o M. Deivarayan.

I admit execution of the above charge on the
11th January, 1965 for \$20,000.00 bearing interest
at the rate of 12% per annum in favour of your
client.

20

No On Demand Note for \$20,000.000 was ever
executed by me on the 30th July, 1964 in favour
of your client.

I shall be obliged if your client will supply
me with statement of account regarding the above
charge, and enclose herewith 50 cents in stamp.

Yours faithfully,

Sd: Ng Siew San.

140.

No. 2

Letter, Shearn Delamore & Co. to
Ng Siew San

SD 19776/1 (K)

17th October, 1967

Mr. Ng Siew San,
No.446, 7½ Mile Ulu Klang Road,
Ulu Klang,
Selengor.

A. R. REGISTERED.

Exhibits

No. 2

Letter,
Shearn
Delamore & Co.
to Ng Siew
San

17th October
1967

10 Dear Sir,

Charge Presentation No. 167/65
Volume 204 Folio 94.

We acknowledge receipt of your letter of the 11th instant. In addition to the Charge referred to in your letter under reply, you had also executed a On Demand Note in favour of our client dated 30th July, 1964, a copy whereof is enclosed herewith.

20 As requested, we forward herewith a Statement of Accounts which please acknowledge receipt.

If settlement of our client's claim is not made within a further period of five (5) days from to-day's date, we will proceed with legal action.

Yours faithfully,

Sd. Shearn Delamore & Co.

SC/.

c.c.

Madam Menaka,
w/o M. Deivarayan,
No.30, Leboh Ampang,
Kuala Lumpur.

30

Exhibits

No. 3

No. 3

Letter, Ng Siew San to Shearn
Delamore & Co.

Letter,
Ng Siew San
to Shearn
Delamore & Co.

Your Ref: SD 19776 (K)

Ng Siew San,
No.446, 7½ Mile Ulu
Klang Road,
Kuala Lumpur,
28th October 1967.

28th October
1967

Registered A.R.

10

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
P.O. Box 138,
Kuala Lumpur.

Dear Sirs,

Re: Charge Presentation No.167/65
Volume 204 Folio 94.

I thank you for your letter of the 17th
October 1967 with enclosure and note the contents
thereof and in reply I regret to inform you that
owing to the present price of rubber, I am unable
to deal with my property consequently I will be
unable to repay to your client the amount due and
hope that he will give me some time to raise the
money to repay him. In the meantime I enclose my
cheque post dated 6th November 1967 for \$3200.00
being in payment of the half of the amount due
for interest and will settle the balance by two
monthly instalments in December 67 and January 68.

20

I will pay your client the monthly interest
from December 67.

30

I shall be very grateful if your client will
accept my request.

Yours faithfully,
Sd. Ng Siew San.
Ng Siew San.

Enc Malayan Bank Cheque
No.594454 for \$3200.00

142.

No. 4

Letter, Shearn Delamore & Co.
to Ng Siew San

SD 19776/1 (K)

17th November, 1967.

Mr. Ng Siew San,
No. 446, 7½ Mile Ulu Klang Road,
Kuala Lumpur.

Exhibits

No. 4

Letter,
Shearn
Delamore & Co.
to Ng Siew
San

17th November
1967

Dear Sir,

re: Menaka w/o M. Deivarayan

We refer to our letter of the 17th October, 1967 and the 15th instant which said letters carried the wrong heading. They should carry the heading quoted above.

Yours faithfully,

Sd. Shearn Delamore & Co.

SC/.

c.c.
Madam Menaka,
w/o M. Deivarayan,
No. 30 Leboh Ampang,
Kuala Lumpur.

No. 5

Letter, Shearn Delamore & Co.
to Ng Siew San

10th January, 1968

Mr. Ng Siew San,
No. 446, 7½ Mile Ulu Klang Road,
KUALA LUMPUR.

No. 5

Letter,
Shearn
Delamore & Co.
to Ng Siew
San

10th January
1968

A.R. REGISTERED.

Dear Sir,

Re: Menaka w/o M. Deivarayan

We refer you to your letter dated 28th October, 1967 wherein you promised to pay the balance interest in two instalments, one in December, 1967 and the other in January, 1968.

Exhibits

No. 5

Letter,
Shearn
Delamore & Co.
to Ng Siew
San

10th January
1968

(continued)

TAKE NOTICE that the amount due by way of interest as at 6th January, 1968 amounts to \$3,806.66. We are instructed to give you Notice and which we hereby do that you let us have, as solicitors for our client abovenamed, the said sum within 7 days of the date hereof, failing which we have express instructions to file proceedings for the recovery of the said interest and the principal sum of \$20,000/-.

We shall be grateful, if in order to avoid this course you let us have the interest sum of \$3,806.66 as suggested above.

10

Yours faithfully,

Sd. Shearn Delamore & Co.

c.c.
Madam Menaka w/o M. Deivarayan,
No. 30 Leboh Ampang,
KUALA LUMPUR.

IC.

No. 6

Letter,
Ng Siew San
to Shearn
Delamore & Co.

24th January
1968

No. 6

Letter, Ng Siew San to Shearn
Delamore & Co.

Ng Siew San,
No.446, 7½ Mile Ulu Klang Road,
Kuala Lumpur,
24th January 1968.

Registered.

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
P.O. Box 138,
Kuala Lumpur.

Your ref: SD.19776/1 (KLR)

20

30

Dear Sirs,

re Menaka w/o M. Deivarayan

With reference to your letter of the 10th instant. I regret very much to inform you that owing to the present low price of rubber I am unable to pay your client the whole of interest due, however I am enclosing Malayan Bank Cheque No.594474 for \$2000.00 dated 18th February 1968 as part payment and will make a further payment in May or June next.

40

I hope that your client will kindly accept my appeal.

Yours faithfully,
Sd. Ng Siew San

Exhibits
No. 6
Letter,
Ng Siew San
to Shearn
Delamore & Co.
24th January
1968
(continued)

P2A

Power of Attorney, AL. Chockalingam
to Alagappa Chettiar

Pejabat Setem 4275 (Seal)
Kuala Lumpur Stamp Duty paid
10IV68 \$10.00

10

P2A
Power of
Attorney, AL.
Chockalingam
to Alagappa
Chettiar
4th April
1968

POWER OF ATTORNEY

Known all men by these presents that AL. CHOCKALINGAM son of S. AL. Alagappa Chettiar of No.30, Leboh Ampang, Kuala Lumpur now residing at Dr. Nair Road, House No. 7, Madras-17, South India. do hereby nominate and appoint ALAGAPPA CHETTIAR son of Sockalingam of No. 30 Leboh Ampang, Kuala Lumpur to be my attorney for me and in my name or otherwise to do all or any of the following things within the Malaysia.

20

1. To demand, sue for, recover and receive by all lawful ways and means from all and every person whom it may concern all moneys rents, debts, tributes, dues, goods and property whatsoever which now are or may hereafter become due, owing, payable or belonging to me upon or by virtue of any judgment, decree, bill, bond, promissory note, account or upon any instrument relating thereto; and upon receipt recovery of the same to grant sufficient acquittances, releases and discharges and in case of non-payment or non-delivery to distrain and to take such action in law or other proceedings as may be necessary for the recovery of the same.

30

2. To state, settle, adjust, compound and compromise all accounts, claims, demands and differences between myself and any other person or persons and if advisable to refer any such matters to

Exhibits

P2A

Power of
Attorney, AL.
Chockalingam
to Alagappa
Chettiar

4th April
1968

(continued)

arbitration and for that purpose to sign, deal and execute any agreement of reference or any instrument necessary.

3. To pay and settle all my lawful debts and obtain all and effectual receipts and releases for the same.

4. To appear before any Judge, Magistrate or any Public Officer in connection with any of the matters herein contained, To appeal from any order or judgment given against me.

10

5. To exercise any of the powers vested in me by virtue of any Charge or Bill of Sale, to lodge any caveats and to withdraw the same and to apply for orders to sell; to transfer any such Charges or Bills of Sale, and to sign and execute any discharges or releases in connection with such Charges or Bills of Sale. To sign and execute any charges of which I am the Chargee or one of the Chargees.

6. To let, lease or sub-lease any of my lands and houses upon such terms as my said Attorney shall think advisable to accept the surrender of any lease or sub-lease and for that purpose to sign all necessary leases agreements or other instruments.

20

HIGH COURT O.S. 59/71.
Exhibit No. P2A.
Description of
Exhibit Original P/A
Put in by Applicant.
Date 2/3/72

30

Sd. Illegible
Senior Asst. Registrar,
High Court, Kuala Lumpur.

7. To appear in any Court or Courts and to procure Letters of Administration with or without the will annexed of the estate and effects of any deceased debtor or debtors and to execute such bond, covenant or other obligation as may be required upon the grant of such Letters of Administration.

40

8. To manage and conduct my business in Malaysia and to do and perform all acts or things in the execution of the said business as fully

and completely as I might do were I personally present.

Exhibits

P2A

9. To sell to any person all or any of my lands, leases and charges and moveable property whether now belonging to me or which shall hereafter belong to me and for that purpose to sign and execute all transfers and other instruments necessary.

Power of
Attorney, AL.
Chockalingam
to Alagappa
Chettiar

4th April
1968

10 To charge or mortgage any of my said lands and moveable property and for that purpose to sign all necessary charges and other documents.

(continued)

11. To borrow such sums of money and upon such terms as my said Attorney shall deem expedient upon my personal security or the security of any of my property moveable and immovable in Malaysia and for such purpose to give and execute such mortgages, charges, bills of sale, pledges, promissory notes, bills of exchange, guarantee or other of securities, and with such powers and provisions as may be thought proper.

12. To draw, accept, endorse, give or negotiate or concur with others in drawing, accepting, endorsing, giving or negotiating cheques, bills, notes, or other securities for the goods purchased or for the purpose of borrowing or raising money or otherwise.

13. To surrender any of my leases or title deeds in exchange for others or otherwise as my said Attorney shall think advisable.

30 14. To enter into possession of all my lands and houses and other property, to give notices to quit, to increase the rents of any of the lands and houses, to take down, rebuild, alter, improve or repair all or any of such houses or buildings as occasion may require and to do every other act and thing for the improvement of the same.

40 15. To purchase land, mines, houses and moveable property and for that purpose to sign all necessary agreements, transfers and other documents.

16. To apply for lands for buildings, mining, agricultural or other purposes and to accept such titles as may be advisable.

Exhibits

P2A

Power of
Attorney, AL.
Chockalingam
to Alagappa
Chettiar

4th April
1968

(continued)

17. To accept the lease or sub-lease of any land whether for agricultural, mining, or other purposes from any person or persons upon such terms as my said Attorney think fit and for that purpose to sign all necessary writings and other instruments relating thereto and to surrender same for cancellation if advisable.

18. To apply for and to obtain rubber coupons, licences, certificates of standard production or other documents under The Rubber Regulation Enactment, 1934, to transfer the same and to do and perform all such acts deeds and things as may be necessary under The Rubber Regulations Enactment 1934 or any other Enactment for the time being in force or of any rules made thereunder.

10

19. To invest any moneys upon mortgages or charges of lands, houses, stock-in-trade, goods and chattels, promissory notes or other securities and from time to time to vary such investments or any of them for others of the same or a like nature as my said attorney may think fit.

20

20. To make an affidavit or proof of any debt or debts due or claimed to be due to me in any proceedings taken or hereafter to be taken by or against any person or firm or company under the Bankruptcy Enactment or the Companies Enactment or any other enactment or Ordinance for the time being in force, to attend all meetings of creditors under any such proceedings and to propose, second or vote for or against any resolution at any such meeting and generally to act for me in all proceedings whether by way of bankruptcy or liquidation by arrangement or by composition which may be taken against any debtor of mine as my said Attorney shall think fit.

30

21. To place money to my credit at any Bank on current account or deposit in my name and from time to time withdraw all money which is now or hereafter may be at any Bank or to withdraw to such extent as my said Attorney may think fit and to draw, sign and endorse cheques on any Bank or any receipt or document necessary for this purpose.

40

22. To concur in doing any of the acts and things herein contained with any person or persons interested in the premises.

23. To substitute and appoint from time to time one or more attorney or attorneys with the same or more limited powers and such substitute or substitutes at pleasure to remove and another or others to appoint.

Exhibits

—
P2A

Power of Attorney, AL. Chockalingam to Alagappa Chettiar

4th April 1968

(continued)

And generally to do all acts and things and sign and execute all such documents as may be necessary for effectuating any of the purpose aforesaid as fully and completely as I myself could do if personally present.

10

And I hereby agree to ratify and confirm all and whatsoever my said Attorney or his substitute or substitutes shall lawfully do in the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 4th day of April, in the year One thousand nine hundred and sixty-eight (1968).

SIGNED, SEALED and DELIVERED)
by the said)
in the presence of:-)

20

Sd. AL. Chockalingam

Sd: Illegible)
MONY.1ST CLASS MAGISTRATE)
KOVILPATTI.)

(Seal)

HONY FIRST CLASS MAGISTRATE
KOILPATTI

I. N. DURAIRAJAN a Magistrate of the Kovilpatti of South India hereby certify that the signature of the donor above-named was written in my presence on this 4th day of April, 1968 and is to my own personal knowledge the true signature of AL.Chockalingam who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

30

Witness my hand Sd. N. Durairajan

(Seal)

Hony 1st Class Magistrate,
KOVILPATTI.

(Seal)

HONY FIRST CLASS MAGISTRATE
KOILPATTI.

40

Exhibits

P2A

Power of Attorney, AL. Chockalingam to Alagappa Chettiar

4th April 1968

(continued)

Registered No. 457/68
True Copy deposited in the High Court
Kuala Lumpur on 23.4.68

Sd. Illegible
Clerk

Sd. Illegible.
.....
Senior Asst. Registrar,
High Court, Kuala Lumpur.

P1

Power of Attorney, Menaka to N.A.R.K. Nachiappa Chettiar

8th November 1968

P1

Power of Attorney, Menaka to N.A.R.K. Nachiappa Chettiar

Malayan Stamp for \$10.00 (Seal)
Stamp Office, Kuala Lumpur.

Indian Stamp for 17 Rupees (Seal)
Illegible.

10

POWER OF ATTORNEY

Known all men by these presents that, MENAKA DEIVARAYAN ALIAS MENAKA WIFE OF DEIVARAYAN ALIAS MENAKA WIFE OF M. DEIVARAYAN ALIAS MEYYAMMAI WIFE OF M. DEIVARAYAN I/C NO. 9547009, MANAGING PARTNER OF AR.PR.M. FIRM of 20, LEBOH AMPANG, KUALA LUMPUR now residing at 7. Dr. Nair Road, Madras, South India do hereby nominate and appoint N.A.R.K. NACHIAPPA CHETTIAR son of Kasiviswanathan Chettiar holder of N.R.I.C. No.7599070 of No.30 Leboh Ampang, Kuala Lumpur, Malaysia to be my attorney for me and in my name or otherwise to do all or any of the following things within the Malaysia

20

30

1. To demand, sue for, recover and receive by all lawful, ways and means from all and every person whom it may concern all moneys, rents, debts, tributes, dues, goods and property whatsoever which now are or may hereafter become due, owing, payable or belonging to me upon or by virtue of any judgment, decree, bill bond, promissory note, account or upon any instrument relating thereto; and upon receipt and recovery of the same to grant sufficient acquittance,

release and discharge and in case of non-payment or non-delivery to distrain and to take such action in law or other proceedings as may be necessary for the recovery of the same.

Exhibits

P2A

Power of
Attorney,
Menaka to
N.A.R.K.
Nachiappa
Chettiar

8th November
1968

(continued)

10 2. To state, settle, adjust, compound, and compromise all accounts, claims demands and differences between myself any other person or persons and if advisable to refer any such matters to arbitration and for that purpose to sign, seal and execute any agreement of reference or any instrument necessary.

3. To pay and settle all my lawful debts and obtain full and effectual receipts and release for the same.

4. To appear before any Judge, Magistrate or any Public Officer in connectich with any of the matters herein contained. To appeal from any order or judgment given against me.

20 5. To exercise any of the powers vested in me by virtue of any Charge or Bill of Sale, to lodge any caveat and to withdraw the same and to apply for orders to sell; to transfer any such Charges or Bills of sale, and to sign and execute any discharges or release in connection with such Charges or Bills of Sale. To sign and execute any charges of which I am the Chargee or one of the Chargees.

30 6. To let, lease or sub-lease any of my lands and houses upon such terms as my said Attorney shall think advisable to accept the surrender of any lease or sub-lease and for that purpose to sign all necessary leases agreements surrenders or other instruments.

(Seal)
Indian Bank Ltd.
Kuala Lumpur.
8 Jul 1969
PA 20/69

High Court O.S. No. 59/71
Exhibit No. P1
Description of
Exhibit: P/A
Put in by: Applicant
Date: 2/3/72
Sd: Illegible
Senior Asst. Registrar
High Court, Kuala Lumpur.

Exhibits

—
P1Power of
Attorney,
Menaka to
N.A.R.K.Nachiappa
Chettiar8th November
1968

(continued)

7. To appear in any Court or Courts to procure Letters of Administration with or without the will annexed of the estate and effects of any deceased debtor or debtors and to execute such bond, covenant or other obligation as may be required upon the grant of such Letters of Administration.

8. To manage and conduct my business in the name of AR.PR.M. Firm at 30, Leboh Ampang, Kuala Lumpur, Malaysia and to do and perform all acts or things in the execution of the said business as fully and completely as I might do were personally present. 10

9. To sell to any person all or any of my lands, leases and charges and moveable property whether now belonging to me or which shall hereinafter belong to me and for that purpose to sign and execute all transfers and other instruments necessary.

10. To charge or mortgage any of my said lands and moveable property and for that purpose to sign all necessary charges and other documents. 20

11. To borrow such sums of money and upon such terms as my said Attorney shall deem expedient upon my personal security of any of my property moveable and immovable in Malaysia and for such purpose to give and execute such mortgages, charges, bills of sale, pledges, promissory notes, bills of exchange, guarantee or other of securities, and with such powers and provisions as may be thought proper. 30

12. To draw, accept endorse, give or negotiate or concur with others in drawing, accepting, endorsing, giving or negotiating cheques, bills, notes, or other securities for the goods purchased or for the purpose of borrowing or raising money or otherwise.

13. To surrender any of my leases or title deeds in exchange for others or otherwise as my said Attorney shall think advisable. 40

14. To enter into possession of all my lands and houses and other property, to give notices to quit, to increase the rents of my lands and houses;

to take down rebuild alter, improve or repair all or any of such houses or buildings as occasion may require and to do every act and thing for the improvement of the same.

15. To purchase land, mines, houses and moveable property and for the purpose to sign all necessary agreements, transfers and other documents.

10 16. To apply for lands for building, mining, agricultural or other purposes and to accept such titles as may be advisable.

17. To accept the lease or sub-lease of any land whether for agricultural, mining or other purposes from any person or persons upon such terms as my said attorney may think fit and for that purpose to sign all necessary writings and other instruments relating thereto and to surrender same for cancellation, if advisable.

20 18. To apply for and to obtain rubber coupons, licences, certificates of standard production or other document under The Rubber Regulation Enactment 1934, to transfer the same and to do and perform all such acts deeds and things as may be necessary under the Rubber Regulation Enactment 1934 or any other Enactment for the time being in force or of any rules made thereunder.

30 19. To invest any moneys upon mortgages or charges of lands, houses, stock-in-trade, goods and chattels, promissory notes or other securities and from time to time to vary such investments or any of them for others of the same or a like nature as my said attorney may think fit.

40 20. To make any affidavit or proof of any debt or debts due or claimed to be due to me in any proceedings taken or hereafter to be taken by or against any person firm or company under the Bankruptcy Enactment or the Companies Enactment or any other Enactment or Ordinance for the time being in force, to attend at all meetings of creditors under any such proceedings and to propose second or vote for or against any resolution at any such meeting and generally to act for me in all proceedings whether by way of bankruptcy or liquidation by arrangement or by composition which may be taken against any debtor of mine as my said Attorney shall think fit.

Exhibits

—
P1

Power of
Attorney,
Menaka to
N.A.R.K.
Nachiappa
Chettiar

8th November
1968

(continued)

Exhibits

P1

Power of Attorney, Menaka to N.A.R.K. Nachiappa Chettiar

8th November 1968

(continued)

21. To place money to my credit at my Bank on current account or deposit in my name and from time to time withdraw all money which is now or hereafter may be at any Bank or to overdraw to such extent as my said Attorney may think fit and to draw, sign and endorse cheques on any Bank or any receipt or document necessary for this purpose.

22. To concur in doing any of the acts and things herein contained with any person or persons interested in the premises.

10

23. To substitute and appoint from time to time one or more attorney or attorneys with the same or more limited powers and such substitute or substitutes at pleasure to remove and another or others to appoint.

And generally to do all acts and things and sign and execute all such documents as may be necessary for effectuating any of the purpose aforesaid as fully and completely as I myself could do if personally present.

20

And I hereby agree to ratify and confirm all and whatsoever my said Attorney or his substitute or substitutes shall lawfully do in the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of November, in the year One thousand nine hundred and sixty-eight (1968).

SIGNED SEALED and DELIVERED)
by the said MENAKA)
DEIVARAYAN alias Menaka w/o)
Deivarayan alias Menaka w/o) Sd: Menaka Deivarayan
M. Deivarayan alias) 8.11.68
Meyyammai w/o M.Deivarayan)
in the presence of:-)

30

Sd: R. SRINIVASAGOPALAN
Sixth Presidency Magistrate,
Saidapet, Madras.

(Seal)
Presidency Magistrate's
Court, Saidapet, Madras.
703/68
8.11.68

40

(Seal)
Register of Power of Attorney Volume LVI Folio 138
Copy compared with original deposited
KUALA LUMPUR 5th April, 1971.

Exhibits
—
P1

(Seal) Sd: Illegible
Registrar of Titles, Registrar of Titles,
State of Selangor. Selangor.

Power of
Attorney,
Menaka to
N.A.R.K.
Nachiappa
Chettiar

10 I, R. SRINIVASAGOPALAN (Magistrate, Justice)
(~~of the Peace Collector of Land Revenues Notary~~)
(~~Public Commissioner for Oaths, Bank Official or~~)
Sd: (~~Advocate and Solicitor of the High Court in~~) Sd:
(~~Malaya~~) officiating (~~or practising~~) at the
20 Presidency Magistrate's Court at Saidapet, hereby
certify that the signature of the donor abovenamed
was written in my presence on this 8th day of
November, 1968 and is to my own personal knowledge,
the true signature of Menaka Deivarayan wife of
M. Deivarayan who has acknowledged to me that he
is of full age and that he has voluntarily executed
this instrument.

8th November
1968
(continued)

Witness my hand: Sd: Srinivasagopalan.

(Seal) Sixth Presidency Magistrate,
Saidapet, Madras.
Presidency Magistrate's
Court, Saidapet, Madras.
R 703/68
8.11.68

30 Surat Kuasa Wakil VOL IX Fol 30
Salinan
dan di-simpan di-Pejabat Tanah, Klang
pada16.12.69.....

Registered No.1371/68
True Copy deposited in the
High Court Kuala Lumpur
on 12.11.68.

Sd: Illegible
Clerk.

40 Sd: Illegible
Senior Asst. Registrar,
High Court, Kuala Lumpur.
Compared copy deposited in the Land Office
Kuala Kubu Bharu as Power Attorney Vol.XII
Folio 12 this 14th day of November, 1970.

Sd: Illegible.
(Seal)
Illegible.

Exhibits

No. 7

No. 7
Letter,
Shearn
Delamore & Co.
to Ng Siew
San
27th January
1969

Letter, Shearn Delamore & Co.
to Ng Siew San

A. R. Registered
SD(KLR) 19776/5

27th January 1969

Mr. Ng Siew San,
No.446 - 7½ Mile, Ulu Klang Road,
Ulu Klang,
Selangor.

10

Dear Sir,

Grant for Land Nos. 7695, 8243,
10624, 18012 and Certificates
of Title Nos. 12866 and 12867
in the Township of Tanjong Malim

We act on behalf of Madam Menaka w/o
M. Deivarayan the registered chargee of a charge
executed by you over the above lands and
registered in the Registrar of Titles, Perak on
the 13th day of January, 1965, Presentation No.
167/65 Volume 204 Folio 94. The principal sum
secured by the said charge is payable on demand,
and we are instructed by our client abovenamed
and hereby do demand payment of the principal sum
due on the said charge amounting to \$20,000.00.

20

We are also to point out that as at the 22nd
day of January 1969 the sum of \$9,480.00 was due
by way of interest under the said charge and we
are also instructed to demand which we hereby do,
the payment of the said sum of \$9,480.00.

30

Yours faithfully,

Sd. Shearn Delamore & Co.

cc.
Madam Menaka,
w/o M. Deivarayan,
30, Leboh Ampang,
Kuala Lumpur.

156.

No. 8

Letter, Shearn Delamore & Co. to
Ng Siew San

A. R. REGISTERED

SD. (KLR)19776/5

11th February, 1969

Mr. Ng Siew San,
No.446 - 7½ Mile, Ulu Klang Road,
Ulu Klang,
Selangor.

10 Dear Sir,

Grant for Land Nos. 7695, 8243,
10624, 18012 and C.T. Nos. 12866
and 12867 for Lot Nos. 125, 114,
114A, 327, 321 and 323 respectively
in the Township of Tanjong Malim.

We enclose herewith a Chargee's Notice sent
in accordance with the provisions of Section 255
of the National Land Code for service upon you.

Yours faithfully,

20 Sd. Shearn Delamore & Co.

No. 9

Notice of demand under Sec. 255,
National Land Code

NATIONAL LAND CODE
FORM 16E
(Section 255)

DEMAND FOR PAYMENT OF A PRINCIPAL SUM

30 To: NG SIEW SAN, No.446, 7½ Mile, Ulu Klang Road,
Ulu Klang, Selangor chargor under the charge
described in the schedule below of the land so
described.

WHEREAS the principal sum secured by the
charge amounts to \$20,000.00 and is payable on
demand;

Exhibits

No. 8

Letter,
Shearn
Delamore & Co.
to Ng Siew
San

11th February
1969

No. 9

Notice of
Demand under
Sec.255,
National
Land Code

11th February
1969

Exhibits

No. 9

Notice of
demand under
Sec.255,
National
Land Code
11th February
1969

(continued)

I, as chargee, by virtue of the powers conferred by Section 255 of the National Land Code, hereby require payment of that sum together with arrears of interest due from the 11th day of February 1965 forthwith;

And take notice that, if the said sum and arrears of interest is not paid within one month of the service of this notice, I shall apply for an order of sale.

Dated this 11th day of February 1969.

10

MENAKA

wife of M. Deivarayan
by her Attorney
N.AR.K. Nachiappa Chettiar.

Signature of Chargee

SCHEDULE OF LAND

Mukim or Town	Lot No.	Description and No. of Title	Share of Land (if any)	Regis- tered No. of lease/ sublease (if any)	Regis- tered No. of Charge (if any)	
(1)	(2)	(3)	(4)	(5)	(6)	
Tanjong Malim	125	Grant No. 7695	Whole	Nil		20
"	114	" "	8243 Whole	Nil		
"	114A	" "	10624 Whole	Nil	Presentation	
"	327	" "	18012 Whole	Nil	No. 167/65	
"	321	C.T.	12866 Whole	Nil	Vol. 204	
"	323	" "	12867 Whole	Nil	Folio 94	30

No.10

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.
8th April
1969

No. 10

Letter, Sulaiman Alias & Co. to
Shearn Delamore & Co.

SULAIMAN ALIAS & CO.,
Peguambela dan Peguamchara,
(Advocates & Solicitors)

Our Ref: SA/HJ/40/69
Your Ref: SD/(KLR) 19776/5

Tarikh 8th April, 1969

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

Dear Sirs,

Re: Grant for Land Nos. 7695, 8243,
10624, 18012 and Certificates of
Title Nos. 12866 and 12867 in the
Township of Tanjong Malim.

10 With further reference to your letter dated
27.1.1969 in connection with the above, we are
instructed by our client to write to you and
enquire, which we hereby do, as to the total amount
due and payable herein by him on the said charge of
\$20,000/- including interest due and payable up to
15.4.1969.

Our client wishes to settle this matter on
15.4.1969.

We shall appreciate your early reply.

Yours faithfully,

Sd: Sulaiman Alias & Co.

c.c.

20 Mr. Ng Siew San.

No. 11

Letter, Shearn Delamore & Co. to
Sulaiman Alias & Co.

SA/HJ/40/69
SD. 19776/5 (KLR)

10th April, 1969

30 Sulaiman Alias & Company,
Malindo Chambers,
Kwong Yik Bank Bldg.,
75, Jalan Bandar,
Kuala Lumpur,

Dear Sirs,

Exhibits

No.10

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.

8th April
1969

(continued)

No.11

Letter,
Shearn
Delamore & Co.
to Sulaiman
Alias & Co.

10th April
1969

Exhibits

No.11

Letter,
Shearn
Delamore & Co.
to Sulaiman
Alias & Co.
10th April
1969

(continued)

Grant for Land Nos. 7695, 8243,
10624, 18012 and certificates of
title Nos. 12866 and 12867 for
the Township of Tanjong Malim.

With reference to your letter dated 8th April, 1969, we write to inform you that the principle sum in this case is \$20,000.00 and that interest at 12% from 11th February, 1965 to 15th April, 1969 works up to \$10,033.35. The total amount due stands at \$30,033.35.

10

Kindly let us have your client's cheque on or before 15th April, 1969.

Yours faithfully,

bph.

No.12

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.
17th June
1969

No. 12

Letter, Sulaiman Alias & Co.
to Shearn Delamore & Co.

SD.19776/1, 2, 3,
4 & 5 (M)

17th June, 1969.

20

Messrs. Sulaiman Alias & Co.,
Advocates & Solicitors,
Melindo Chambers,
Kwong Yik Bank Building,
Kuala Lumpur.

Tuan2

Agreement of Sale dated 11.3.69
between Ng Siew San Ng Sna Seng
and Sulaiman bin Alias

We refer to the above matter and to the telephone conversation (Mr. Alias /Mrs.Menon) and regret to note that we have not received your letter confirming that payment of the sum of \$63,415/- plus \$1,411/66 being interest due on the various charges from 31st March 1969 to 18th June 1969, would be made to us on or before the 18th June, 1969.

30

Your client Mr. Ng Siew San has requested us

to take action on his behalf on the Agreement of Sale dated the 11th March, 1969 between your Mr. Alias and the said Ng Siew San. This has necessarily resulted from the fact that our client Menaka w/o M. Deivarayan has threatened to enforce the charge made by Ng Siew San in her favour. We shall be obliged for an immediate reply failing which we will have to take our client's instructions and proceed with necessary action.

Exhibits

No.12

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.

17th June
1969

(continued)

10 We append below details of the interest due:-

Interest on \$3,000/- at 12%	
from 1.4.69 to 17.6.69	\$77.00
Interest on \$12,000/- at 12%	
from 1.4.69 to 17.6.69	308.00
Interest on \$20,000/- at 12%	
from 1.4.69 to 17.6.69	513.33
Interest on \$20,000/- at 12%	
from 1.4.69 to 17.6.69	<u>513.33</u>
	<u>\$ 1,411.66</u>

20

Yang benar,

No. 13

Letter, Shearn Delamore & Co. to
Ng Siew San

SD.19776/1, 2, 3, 4 & 5 (M)

30th June, 1969

Mr. Ng Siew San,
No.446 - 7½ Mile Ulu Klang Road,
Ulu Klang, Selangor.

No.13

Letter,
Shearn
Delamore & Co.
to Ng Siew
San

30th June
1969

30

Tuan,

Grant for land Nos. 7695, 8243, 10634,
18012 and C.T.Nos.12866 and 12867 for
Lots 125, 114, 114A, 327, 321 and 323
respectively, Township of Tg. Malim

We refer to the foreclosure notices sent to you on the 11th February, 1969. As requested by you we wrote to Enche Sulaiman Alias for payment of the sum of \$63,415/- being part of the sum due to our client under Charges Nos.167/65, 13501 &

Exhibits

No.13

Letter,
Shearn
Delamore & Co.
to Ng Siew
San

30th June
1969

(continued)

93289 and promissory note. To date our client has not received payment.

We have, therefore, been instructed to give you final notice that unless the full sum due on the aforesaid Charges plus interests is not paid to us or to our client within the next three (3) days our client will have no alternative but to proceed in foreclosing the Charges.

Yang benar,

K.

Sd. Shearn Delamore & Co.

10

P3B

Deed of
Substitution
3rd July 1969

P2B - Deed of Substitution

2323

Paid Stamp Duty
\$10.00
(Seal)

P2-B

(Seal)

Stamp Office, Kuala
Lumpur. 3VII69.

DEED OF SUBSTITUTION

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, ALAGAPPA CHETTIAR son of Sockalingam Chettiar of No.30, Leboh Ampang, Kuala Lumpur in the State of Selangor Send Greeting:-

20

WHEREAS AL. CHOCKALINGAM son of S.AL.Alagappa Chettiar of Dr.Nair Road, House No.7, Madras-17, South India by a Power of Attorney dated 4th April, 1968 appointed me as his Attorney for him and in his name or otherwise to do certain acts and things in the said Power of Attorney set forth including the power from time to time to appoint any substitute or substitutes as his Attorney with any or all the powers and authorities conferred by the said Power of Attorney which was registered in the High Court at Kuala Lumpur on the 23rd day of April, 1968 with the number 457/68.

30

NOW THIS DEED WITNESSETH that by virtue of such power as aforesaid and of all and every other powers enabling me on his behalf I hereby appoint N.AR.K.NACHIAPPA CHETTIAR son of Kasiviswanathan Chettiar holder of the N.R.I.C. No.7599070 of No.30, Leboh Ampang, Kuala Lumpur in the State of Selangor to be the Attorney of AL.CHOCKALINGAM son

40

of S.AL.Alagappa Chettiar for him and in his name or in my name to do and perform all or any of the acts matters and things which I was authorised to by the said Power of Attorney in the same manner and as effectually as the said AL.Chockalingam or as I might now do them or any or them or as he the said N.AR.K.Nachiappa Chettiar son of Kasiviswanathan Chettiar could have done them or any of them if he had in my stead received authority thereto in the said Power of Attorney.

10

AND I hereby agree to ratify and confirm all that the said N.AR.K.Nachiappa Chettiar son of Kasiviswanathan Chettiar shall do or cause to be done by virtue hereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 3rd day of July, 1969.

SIGNED SEALED and DELIVERED)
 by the said Alagappa Chettiar) Sd: Alagappa Chettiar
 son of Sockalingam Chettiar) s/o Sockalingam
 in the presence of:-) Chettiar

20

Sd: Illegible
 PESUROHJAYA SUMPAN,
 Mahkamah Tinggi,
 Kuala Lumpur.

HIGH COURT QS.No.59/71
 Exhibit No. P2-B

Description of
 Exhibit: Substituted P/A.
 Put in by: Applicant.
 Date: 2/3/72

30

Sd: Illegible
 Senior Asst. Reg.
 H.Ct.K.L.

I, W.P. Sarathy a Commissioner for Oaths, High Court, Kuala Lumpur hereby certify that the signature of the donor above-named was written in my presence on this 3rd day of July, 1969 and is according to my own personal knowledge (~~ex-according to-information-given-to-me-by-trustworthy-and-responsible-persons,-namely~~
 of and
 of which-information-I
 verily-believe) the true signature of Alagappa Chettiar son of Sockalingam Chettiar who has acknowledged to me that he is of full age and that he has

40

Exhibits

P2B

Deed of
 Substitution
 3rd July 1969
 (continued)

Exhibits

voluntarily executed this instrument.

P2B
Deed of
Substitution
3rd July 1969
(continued)

Witness my hand
Sd. W.P.Sarathy.
PESUROHJAYA SUMPAH
Mahkamah Tinggi,
Kuala Lumpur.

STAMP for \$3.00
(Seal.)

Registered No.752/69 True Copy
deposited in the High Court
Kuala Lumpur on 3.7.69.

Sd. Clerk. Senior Asst. Registrar
Sd. Illegible High Court, Kuala Lumpur.

10

No.14
Letter,
Shearn
Delamore & Co.
to Nair & Nair
11th September
1969

No.14
Letter, Shearn Delamore & Co.
to Nair & Nair

NN/416/PK.
SD.19776/1,2,3,4 & 5.

11th September, 1969

Messrs. Nair & Nair,
Advocates & Solicitors,
O.C.B.C. Building,
Kuala Lumpur.

20

Dear Sirs,

As requested we rendered herewith the
particulars of the relevant sums due under the
following charges and promissory note due to our
client from your client Ng Siew San:-

(1) Promissory Note dated 6.2.1965	\$3,000.00	
Interest on \$3000/- at 12% per annum from 6.3.1965 to 28.8.1969	<u>\$1,600.00</u>	30
	\$4,600.00	
Paid on 28.8.1969	<u>\$4,600.00</u>	
Balance	Nil	

	(2)	Charge Presentation No.13501 Volume VIII Folio 70 over E.M.R. Nos. 3517 to 3518 Mukim of Ulu Bernam dated 8.10.1964	\$12,000.00
		Interest on \$12,000/- at 12% per annum from 8.2.1965 to 15.9.1969	\$6,632.00
		Less paid on 28.8.1969	<u>240.00</u>
		(Interest continuing)	<u>6,392.00</u>
10		Amount due	<u><u>\$18,392.00</u></u>
	(3)	Charge Presentation No.167/65 Volume 204 Folio 94 over Grant Nos.7695, 8243, 10624, 18012 and C.T.Nos.12866 and 12867 for Lot Nos.125, 114, 114A, 327, 321 and 323 Township of Tanjong Malim dated 11.1.1965	\$20,000.00
		Interest on \$20,000/- at 12% per annum from 11.1.1965 to 15.9.1969	\$11,033.33
20		Less paid on 28.8.1969	<u>400.00</u>
			<u>\$10,633.33</u>
		Amount due	<u><u>\$30,633.33</u></u>
	(4)	Charge Presentation No.93289 Volume CLXV Folio 155 over C.T.No.13110 Lot 446 Mukim Ulu Bernam dated 8.4.1964	\$23,000.00
		Less paid on 28.8.1969	<u>7,300.00</u>
			\$15,700.00
		Interest on \$23,000/- at 12% per annum from 8.2.1969 to 15.9.1969	\$12,711.28
30		Paid on 28.8.1969	<u>230.00</u>
		(Interest continuing)	<u>\$12,481.28</u>
		Amount due	<u><u>\$15,930.00</u></u>

Exhibits

No.14

Letter,
Shearn
Delamore & Co.
to Nair & Nair
11th September
1969

(continued)

Kindly ensure that the payment of the amounts due are paid to our client as soon as possible.

We enclose herewith Original Promissory Note together with receipts for \$25,021.28 (\$21.28 paid by your client) which kindly acknowledge receipt.

40

Yours faithfully,

Sd. Shearn Delamore & Co.

Exhibits

No. 15

No.15
 Letter, Shearn
 Delamore & Co.
 to Nair & Nair
 12th September
 1969

Letter, Shearn Delamore & Co.
to Nair & Nair

NN/416/PK
 SD(M) 19776/2, 3, 4 & 5

12th September 1969

Messrs. Nair & Nair,
 Advocates & Solicitors,
 O.C.B.C. Building,
Kuala Lumpur.

10

Dear Sirs,

Re: Grant for Land Nos. 7695, 8243,
 10624, 18012, C.T. Nos. 12866,
 12867 Township of Tanjong Malim
 C.T.No.13110 Mukim of Ulu Bernam
 and E.M.R.Nos.3517 and 3518
Mukim of Ulu Bernam

As requested we mentioned below the interest
 due on the sum of \$63,415.00 due to our client by
 your client NG Siew San.

20

Interest on \$63,415.00 at 12% per
 annum from 1.4.1969 to 14.8.1969 \$2,832.53

Interest on \$38,415.00 at 12% per
 annum from 15.8.1969 to 15.9.1969 396.95

\$3,229.48

Yours faithfully,
 Sd. Shearn Delamore & Co.

No.16

No. 16

Letter, Shearn
 Delamore & Co.
 to Ng Siew San

3rd October
 1970

Letter, Shearn Delamore & Co.
to Ng Siew San

A. R. REGISTERED

SD(M) 19776/5

3rd October 1970

Mr. Ng Siew San,
 No.446 - 7½ Mile, Ulu Klang Road,
Ulu Klang,
 (Selangor)

30

Dear Sir,

Grant for Land Nos.7695, 8243, 10624, 18012, C.T.Nos.12866 and 12867 for Lot Nos.125, 114, 114A, 327, 321 and 323 respectively in the Township of Tanjong Malim.

We enclose herewith a Chargee's Notice sent in accordance with the provisions of Section 255 of the National Land Code for service upon you.

10

Yours faithfully,

Exhibits

No.16

Letter, Shearn Delamore & Co. to Ng Siew San

3rd October 1970

(continued)

No. 17

Notice of demand under Sec.255 National Land Code

NATIONAL LAND CODE
FORM 16E
(Section 255)

DEMAND FOR PAYMENT OF A PRINCIPAL SUM

To: NG SIEW SAN, No.446 - 7½ Mile, Ulu Klang Road, Ulu Klang, Selangor chargor under the charge described in the schedule below of the land so described.

20

WHEREAS the principal sum secured by the charge amounts to \$20,000.00 and is payable on demand;

I, as chargee, by virtue of the powers conferred by Section 255 of the National Land Code, hereby require payment of that sum together with arrears of interest due from the 11th day of April 1965 forthwith;

30

And take notice that, if the said sum and arrears of interest is not paid within one month of the service of this notice, I shall apply for an order of sale.

Dated this 3rd day of October, 1970

MENAKA

Wife of M. Deivarayan
by her Attorney
N.AR.K. Nachiappa Chettiar
Signature of Chargee

No.17

Notice of demand under Sec.255 National Land Code

3rd October 1970

Exhibits

No.17
Notice of
demand under
Sec.255
National
Land Code

3rd October
1970

(continued)

SCHEDULE OF LAND

Mukim or Town	Lot No.	Description and No. of Title	Share of Land (if any)	Regis- tered No. of lease/ sublease (if any)	Regis- tered No. of Charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
Tanjong Malim	125	Grant No. 7695	Whole	Nil)	Presentation
"	114	"	8243 Whole	Nil)	No.167/65
"	114A	"	10624 Whole	Nil)	Volume 204
"	327	"	18012 Whole	Nil)	Folio 94.
"	321	C.T.	12866 Whole	Nil)	
"	323	"	12867 Whole	Nil)	

10

No.18

Statement
under
Section 20(2)
Moneylenders
Ordinance
1951

No. 18

Statement under Section 20(2),
Moneylenders Ordinance 1951

A STATEMENT AS REQUIRED UNDER SECTION 20(2) OF THE
MONEYLENDERS ORDINANCE 1951

20

FIRST SCHEDULE

Table 1. PRINCIPAL AND INTEREST

Principal	Date of Loan	Rate per centum per annum or the amount of interest
₹30,000.00	30.7.1964	12%

Table 2. REPAYMENT

Amount Repaid	Date
₹10,000.00	6.2.1965

Table 3. AMOUNT OF ARREARS

Principal	Date Due	Interest	Date Due
20,000.00	On Demand Demand made for payment within 7 days of 5.10.67	₹1,860.00	Interest on 30,000/- at 12% from 30.7.64 to 5.2.65

Exhibits

No.18

Statement
under
Section 20(2)
Moneylenders
Ordinance
1951

(continued)

10

20

Principal	Date Due	Interest	Date Due
	Brought forward	1,860.00	
		<u>₹6,400.00</u>	Interest on
			₹20,000/- at
			12% from
			6.2.65 to
			5.10.67
		<u>₹8,260.00</u>	
			₹300/- paid on
			11. 9.64.
			₹300/- paid on
			12.10.64
			₹600/- paid on
			11.12.64.
			₹300/- paid on
			16. 1.65.
			₹360/- paid on
			16. 3.65.
		<u>₹1,860.00</u>	
	Due	<u>₹6,400.00</u>	
			Interest
			continuing

Table 4. SUMS NOT YET DUE

Principal	Date Due	Interest	Date Due
-	-	-	-

MENAKA w/o M. DEIVARAYAN

by her Attorney
Manickam Chettiar.

Exhibits

No. 19

No.19
Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.
4th November
1970

Letter, Sulaiman Alias & Co.
to Shearn Delamore & Co.

SULAIMAN ALIAS & CO.
Peguambela dan Peguamchara
(Advocates & Solicitors)

Surat Tuan SD(M)19776/5
Surat Kami KL/275/70

Tarikh 4th November, 1970

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

10

Dear Sirs,

Grant for Land Nos. 7695, 8243,
10624, 18012, C.T. Nos. 12866 and
12867 for Lot Nos. 125, 114, 114A,
327, 321 and 323 respectively, in
the Township of Tanjong Malim.

We have been handed your letter dated 3.10.1970
and its enclosure addressed to our client Mr. Ng
Siew San of No.446, 7½ Mile, Ulu Klang Road,
Kuala Lumpur with instructions to reply thereto.

20

We have been instructed to inform you that
our client has entered an Agreement with one Haji
Mohamed bin Baginda Samah to sell 2 pieces of his
lands in Ulu Bernam and our client expects to
complete the sale on or before 31.1.1971.

We have been further instructed to inform you
that our client will settle the amount due on the
said Charge together with interest due thereon on
or before 31.1.1971.

30

In the circumstances, we have been finally
instructed to request you, which we hereby do, to
advise your client to keep this matter in abeyance
for the time being. We will revert to you as soon
as the said Sale is completed.

Yours faithfully,
Sd: Sulaiman Alias & Co.

c.c.
Mr. Ng Siew San.

No. 20

Letter, Shearn Delamore & Co. to
Sulaiman Alias & Co.

KL/275/79
SD.19776/5 (M)

12th November, 1970

M/s. Sulaiman Alias & Co.,
Bangunan Cho Tek,
135 Jln. Tunku Abdul Rahman,
Kuala Lumpur.

10

Tuan2

Grants for Land 7695, 8243, 10624,
18012, C.T.Nos.12866 and 12867,
Township of Tanjong Malim.

We refer to your letter dated the 4th November,
1970 and would inform you that our client is not
agreeable to your proposal.

Yang benar

K.

Shearn Delamore & Co.

20

No. 21

Letter, Sulaiman Alias & Co. to
Shearn Delamore & Co.

SULAIMAN ALIAS & CO.,
Peguambela dan Peguamchara
(Advocates & Solicitors)

Surat Tuan SD.19776/5 (M)
Surat Kami KL/275/70.

Tarikh 26th November, 1970

30

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

Tuan2

Grants for Land 7695, 8243, 10624,
18012, C.T.Nos.12866 and 12867,
Township of Tg. Malim.

We refer to your letter of 12th November, 1970.

Exhibits

No. 20

Letter,
Shearn
Delamore & Co.
to Sulaiman
Alias & Co.

12th November
1970

No.21

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.

26th November
1970

Exhibits

No.21

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.

26th November
1970

(continued)

We have been instructed to inform you that our client will settle the outstanding debt due herein and interest on or before 31.12.1970.

We hope your client will agree thereto.

May we hear from you.

Yang benar,

Sd. Sulaiman Alias & Co.

c.c.
Mr. Ng Siew San.

No.22

Letter,
Shearn
Delamore & Co.
to Sulaiman
Alias & Co.

8th December
1970

No. 22

Letter, Shearn Delamore & Co.
to Sulaiman Alias & Co.

KL/275/70
SD.19776/5 (M)

8th December, 1970

M/s. Sulaiman Alias & Co.,
Bangunan Cho Tek,
135 Jalan Tuanku Abdul Rahman,
Kuala Lumpur.

Tuan2

Grants for Land 7695, 8243, 10624,
18012, C.T.Nos. 12866 & 12867,
Township of Tg. Malim.

We refer to your letter dated the 26th November, 1970 and write to inform you that our client is agreeable to allowing your client until the 31st December, 1970 to settle the debt and interest due in full.

Yang benar,

K. Shearn Delamore & Co.

s.k. Puan Menaka w/o M. Deivarayan,
No.30, Leboh Ampang,
Kuala Lumpur.

10

20

30

No. 23

Letter, Sulaiman Alias & Co. to
Shearn Delamore & Co.

SULAIMAN ALIAS & CO.
Peguambela & Peguamchara,
(Advocates & Solicitors)

Surat Tuan: SD.19776/5 (M)
Surat Kami: KL/275/70.

Tarikh 10th December, 1970

10 Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

Tuan2

Grants for Land 7695, 8243, 10624,
18012, C.T.Nos.12866 and 12867,
Town of Tg. Malim.

We thank you for your letter dated the 8th
instant.

Yang benar,

Sd: Sulaiman Alias & Co.

20 mh/

No. 24

Letter, Shearn Delamore & Co. to
Sulaiman Alias & Co.

KL/275/70
SD.19776/5 (M)

19th January, 1971

30 M/s. Sulaiman Alias & Co.,
Bangunan Cho Tek,
135, Jln. Tunku Abdul Rahman,
Kuala Lumpur.

Tuan2

Grant for land 7695, 8243, 10624,
18012, C.T.Nos. 12866 & 12867
Township of Tanjong Malim

We refer to our letter to you dated the 8th
December, 1970 and regret to note that we have not
to date heard from you. Please note that unless

Exhibits

No.23

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.
10th December
1970

No.24

Letter,
Shearn
Delamore & Co.
to Sulaiman
Alias & Co.
19th January
1971

Exhibits

No.24

Letter,
Shearn
Delamore & Co.
to Sulaiman
Alias & Co.

19th January
1971

(continued)

No.25

Letter,
Sulaiman
Alias & Co.
to Shearn
Delamore & Co.

20th January
1971

your client settles the amount due to our client within three days from the date hereof, our client will have no alternative but to take immediate action against your client.

Yang benar,

Shearn Delamore & Co.

K.

No. 25

Letter, Sulaiman Alias & Co.
to Shearn Delamore & Co.

SULAIMAN ALIAS & CO.
Peguambela & Peguamchara,
(Advocates & Solicitors,)

Surat Tuan: SD.19776/5 (M)
Surat Kami: KL/275/70

Tarikh 20th January, 1971

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

Dear Sirs,

Grant for Land 7695, 8243, 10624,
18012, C.T.Nos.12866 & 12867,
Township of Tanjong Malim.

We thank you for your letter dated the 19th instant.

We have written to our client advising him to settle your client's claim herein immediately.

Please withhold proceedings in this matter until you hear from us.

Yours faithfully,

Sd: Sulaiman Alias & Co.

10

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No. 26, Translation of Ledger, page 57

Exhibits

Translation of a document in Tamil

No.26

Ledger as from the 4th day of the month of
Thai of the Sobakiruthu Year. From 17.1.1964.

Translation
of Ledger,
page 57

AR.PR.M.Firm
No.30, Leboh Ampang, Kuala Lumpur.

Page 57

No.20, Debit Credit Account of Chinese Ng Siew San
of House No.30A Lorong Kapar, Klang Road.

10 1965

January 11 Debit to a On Demand Charge at 12%
interest executed through lawyer Tan
Tech Bok of Shook Lin & Bok office on
this date on 6 house Lot land grants of
0.3.25.52 acre in GIL Nos 7695, 8243,
10624, 18012 and CT Nos.12866, 12867
Lot Nos. 125, 114, 114A, 327, 321, 323
in Tanjong Malim Town, Batang Padang
District \$20,000..

20 March 16 Credit interest for
1 month \$200..

April 12 Debit to profit credit account \$200..

Principal Debit \$20,000.00

This is the True Translation of the
Original Document produced in
Serial No.477 of 1971.

Sd: Illegible.

.....Interpreter.
High Court, Kuala Lumpur.

30 1.4.71.

Exhibits

No. 27

No.27
Translation
of Ledger,
page 53

Translation of Ledger, page 53

Translation of a document in Tamil

Ledger for Visuvavasu Year

AR.PR.M. Firm
No.30, Leboh Ampang, Kuala Lumpur.

Page 53

No.17 Account of Chinese Ng Siew Chan of
House No.30A Lorong Kapar, Klang Road.

1965

10

April 13	Debit to Kurothi Year account Principal less 1 month interest in respect of \$20,000 on a On Demand charge at 12% interest executed through lawyer Tan Teh Bok of Shook Lin and Bok office on 6 house lot land grants of 0.3.25.52 acre in G1 Nos 7695, 8243, 10624, 18012 and CT Nos 12866, 12867. Lot Nos 125, 114, 114A, 327, 321, 323 on 11.1.1965	\$20,000 ..	20
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This is the True Translation of the
Original Document produced in
Serial No. 479 of 1971.

Sd: Illegible

.....Interpreter.
High Court, Kuala Lumpur.

1.4.71

No. 28

Translation of Ledger, page 25

Exhibits

No.28

Translation
of Ledger,
page 45

Translation of a document in Tamil

Ledger for Parabava Year

AR.PR.M.Firm
No.30, Leboh Ampang,
Kuala Lumpur.

Page 45

10 No. 11 Account of Chinese Ng Siew Shan of House
No.30A Lorong Kapar, Klang Road.

1966

20 April 14 Debit to Visuvavasu Year account
principal less 1 month interest in
respect of \$20,000 on a On Demand
Charge at 12% interest executed
through lawyer Tan Tech Bok of
Shook Lin & Bok on 6 house lot land
grants 0.3.25.52 acre in GL Nos.
7695, 8243, 10624, 18012 and C.T.
Nos. 12866, 12867 Lot Nos. 125,
114, 114A, 327, 321, 323 in Tanjong
Malim Town, Batang Padang District
on 11.1.1965 \$20,000 ..

This is the True Translation of the
Original Document produced in
Serial No. 481 of 1971.

Sd. Illegible.

..... Interpreter
High Court, Kuala Lumpur.

30 1.4.71.

Exhibits

No. 29

No.29

Translation of Ledger, page 71

Translation
of Ledger,
page 71

Translation of a document in Tamil

Ledger for Pilavanga Year

AR.PR.M. Firm
No.30 Leboh Ampang,
Kuala Lumpur.

Page 71

No. 11 Account of Chinese Ng Siew Chan of House No.30A Lorong Kapar, Klang Road. 10

1967

April 14 Debit to Parabava Year account principal less 1 month interest received in respect of \$20,000 on a On Demand charge at 12% interest executed through lawyer Tan Teoh Bok of Shook Lin & Bok on 6 house lot grants GL Nos 7695, 8243, 10624, 18012 and CT Nos 12866, 12867 Lot Nos 125, 114, 114A, 327, 321, 323 in Tanjong Malim Town, District of Batang Padang on 11.1.1965 \$20,000 .. 20

This is the True Translation of the Original Document produced in Serial No. 482 of 1971

Sd: Illegible

.....Interpreter
High Court, Kuala Lumpur.

1.4.71.

30

No. 30

Translation of Ledger, page 69

Translation of a document in Tamil

Ledger for Keelaka Year
1968 1969

AR.PR.M. Firm
No. 30 Leboh Ampang

Page 69

Exhibits

No.30

Translation
of Ledger,
page 69

10 No. 10 Account of Chinese Ng Siew Chan of
No.30A Lorong Kapar, Klang.

1968

20 April 13 Debit to Pilavanga year account;
principal as on 11.2.1965 less 1
month interest received on charge
at 12% interest executed on 11.1.1965
through lawyer Tan Teoh Bok of Shook
Lin & Bok Office on 6 house lot land
grants of 0.3.25.52 acre in Lot Nos
125, 114, 114A, 327, 321, 323 C.T.
Nos 12866, 12867 and G.L. Nos. 7695,
8243, 10624, 18012 in Tanjong Malim
Town, Batang Padang District \$20,000 ..

This is the True Translation of the
Original Document produced in
Serial No. 485 of 1971

Sd: Illegible

.....Interpreter
High Court, Kuala Lumpur

1.4.71

Exhibits

No. 31

No.31
Translation
of Ledger,
page 65

Translation of Ledger, page 65

Translation of a document in Tamil

Ledger for Soumiya Year
1969 to 1970

AR.PR.M. Firm
No.30 Leboh Ampang, Kuala Lumpur.

Page 65

No. 8 Account of Chinese Ng Siew Chan of House
No. 30 Lorong Kapar, Klang. 10

1969

April 13 Debit to Keelaka year account;
principal as on 11.2.1965 less
1 month interest received on a
charge at 12% interest executed on
11.1.1965 through lawyer Tan Teoh
Bok of Shook Lin & Bok office on
6 house lot grants of 0.3.25.52
acre in GL Nos.7695, 8243, 10624,
18012 and CT Nos. 12866, 12867, 20
Lot Nos. 125, 114, 114A, 327,
321, 323 in Tanjong Malim Town
Batang Padang District in the
name of the above-mentioned
person \$20,000 ..

August 28 Credit interest for
2 months \$400 ..

1970 \$400 ..

April 13 Debit to profit credit account
Total Credit Debit \$400 .. \$20,000 .. 30
Total Debit less Credit \$20,000 ..

This is the True Translation of the
Original Document produced in
Serial No. 487 of 1971

Sd: Illegible
.....Interpreter
High Court, Kuala Lumpur.
1.4.71.

Translation of Ledger, page 63

Translation of a document in Tamil

Ledger for Satharana Year 1970 - 1971

AR.PR.M. Firm

No. 30 Leboh Ampang, Kuala Lumpur.

Page 63

No. 7 Account of Chinese Ng Siew Chan of
30A Lorong Kapar, Klang Road.

10 1970

April 14 Debit to Soumiya Year account
principal as on 11.4.1965 less
3 months interest on a charge
executed on 11.1.1965 through
lawyer Tan Teoh Bok of Shook
Lin & Bok office on 6 house lot
land grants 0.3.25.52 acre in
GL Nos 7695, 8243, 10624, 18012
and CT Nos 12866, 12867 Lot Nos.
20 125, 114, 114A, 327, 321, 323 in
Batang Padang District Tanjong
Malim Town in the name of the
above-mentioned person \$20,000 ..

This is the True Translation of the
Original Document produced in
Serial No. 489 of 1971.

Sd: Illegible

.....Interpreter
High Court, Kuala Lumpur.

30

1.4.71.

Exhibits

No. 33

No.33
Receipts
issued by
AR.PR.M.Firm
and cheque

Receipts issued by AR.PR.M.Firm
and cheque

No.173

Reg.Buss.Cert No.128382

Date:

AR.PR.M. FIRM
Managing Partner: Menaka w/o M.Deivarayan
30, Leboh Ampang, Kuala Lumpur

Received from:

the sum of Dollars

10

being in payment of Principal/Interest for
months up to in respect of dated
dated

For AR. PR. M. FIRM

₹ _____

Agent/Clerk

Regd.Buss.Cert No.128382

No. 55

Date:

AR.PR.M. FIRM
Managing Partner: Menaka w/o M.Deivarayan
30 Leboh Ampang, Kuala Lumpur

20

Received from: Ng Siew San

the sum of Dollars Two hundred only

being in payment of Principal/Interest for
months up to in respect of
dated

For AR. PR. M. FIRM

Manickam Chettiar

₹ 200/-

Agent/Clerk

182.

No. K809253

11.1.1965

Stamp
Duty
Paid

Exhibits

No.33

THE INDIAN BANK LIMITED

KUALA LUMPUR

Receipts
issued by
AR.PR.M. Firm
and cheque
(continued)

PAY Messrs. Shook Lin & Bok

~~OR-BEARER~~

DOLLARS Twenty thousand only

For AR. PR. M. FIRM

\$20,000/-

Manickam Chettiar

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 16 of 1974

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN:-

MENAKA, wife of M. Deivarayan

Appellant

- and -

LUM KUM CHUM as Executrix of the
last Will of Ng Siew ^{San} deceased
appointed by Order of the
Federal Court, dated 18th February
1974, to represent the Estate of
Ng Siew San

Respondent

RECORD OF PROCEEDINGS

WILSON FREEMAN,
6/8 Westminster Palace Gardens,
Artillery Row, London SW1P 1RL.

Solicitors for the Appellants

LOVELL WHITE & KING,
1, Serjeants Inn,
London, EC4Y 1LP.

Solicitors for the Respondent.