**(1999) 03 SHI CK 0001**

**In the High Court Of Himachal Pradesh**

**Case No :** Civil Suit No. 137 of 1992

Central Bank of India APPELLANT

Vs

Eleena Fasteners (P) Ltd. and Others RESPONDENT

**Date of Decision :** 03-03-1999

**Acts Referred:**
Civil Procedure Code, 1908 (CPC) — Section 16

**Citation :** AIR 1999 HP 104 : (1999) 98 CompCas 3 : (2000) 1 RCR(Civil) 653 : (1999) 2 ShimLC 263

**Hon'ble Judges :** R.L. Khurana, J

**Bench :** Single Bench

**Advocate :** Ashok Sood, for the Appellant; Sanjeev Kuthiala, for the Respondent

## Judgement

R.L. Khurana, J.—The present suit for the recovery of Rs. 5,71,749.85 has been preferred by the plaintiff-Bank against the four defendants under Order 34, Code of Civil Procedure.

2. Defendant No. 1 M/s. Eleena Fasteners (P) Ltd. is a private limited company incorporated under the Companies Act. Defendants Nos. 2 and 3 are the promoters and Directors thereon. On having been authorised by the Board of Directors of defendant No. 1, defendants 2 and 3 approached the plaintiff-Bank at Nahan for the grant of cash credit facility against hypothecation of stock and for the gram of bill discounting facility. The plaintiff-Bank granted cash credit facility to the tune of Rs. 2.30 lacs and bill discounting facility to the tune of Rs. 3 lacs to defendant No. 1 on the condition that the defendant-Company and its Directors will remain bound by all terms and conditions'' of loan facilities. Defendants 2 and 3 also undertook to give their personal security forthe repayment of the amount sanctioned in favour of defendant No. 1 as loan towards the abovesaid two facilities. Defendant No .4 created an equitable mortgage in respect of her immovable property situate at Jagadhari. Consequent upon sanction of loan in favour of defendant No. 1, all the necessary documents came to be executed by defendants 2 to 4. The two loans carried interest at the

 

rate of 16 1/2% per annum with quarterly rests. The defendants having availed of the loan failed to pay the amount in terms of the conditions on which the loans were sanctioned and as on the date of suit, a sum of Rs. 5,71,749.85 towards principal and interest was due from the defendants towards such loan. Hence, the suit.

3. Defendants I and 3 did not put in appearance in spite of service and consequently they were ordered to be proceeded against ex parte.

4. The suit is thus being resisted and contested only by defendants 2 and 4. While resisting the suit, these defendants have admitted the loans in favour of defendant No. 1. They have, however, denied either having furnished their personal guarantee for the repayment of loan or having created an equitable mortgage as a collal; eral security for such loan. Objections as to jurisdiction of this Court and the suit not having been filed through a competent person were also raised. It was further pleaded that the present suit is liable to be stayed u/s 10, CPC in view of pendency of an earlier suit between the parties at Jagadhari with regard to alleged mortgage. It was also pleaded that with effect from 29-7-1991 defendant No. 3 was in sole control of affairs of defendant No. 1 with the consent of plaintiff-Bank and in view of the agreement dated 14-11-1991, defendants 2 and 4 are absolved from their liability in respect of two loans.

5. On the pleadings of parties, following issues were framed on 28-12-1994 :--

1. Whether the present suit is liable to be stayed u/s 10, CPC, as alleged? OPD

2. Whether this Court has no jurisdiction to try the present suit ? OPD

3. Whether the suit has been filed by a competent person. If not, its effect ? OP Parties.

4. Whether the loan documents executed by defendant No. 2 were on behalf of defendant No. 1 and, therefore, defendant No. 2 was not liable personally for the loan amount, as alleged ? OPD

5. Whether the plaintiff-Bank obtained signatures of defendant No. 4 at Jagadhari on blank papers by fraud and misrepresentation, as alleged? If so, its effect? OPD

6. Whether equitable mortgage could not be created in the manner it has been so done, as alleged ? If so, its effect? OPD

7. Whether defendant No. 3 was in sole control of defendant No. 1 with effect from 29-7-1991 with the collusive assent of the plaintiff, as alleged. If so, its effect ? OPD

8. Whether the plaintiff is estopped to file the present suit in view of its act and conduct, as alleged? OPD

9. Whether defendants Nos. 2 and 4 are absolved of their liability in view of acceptance of agreement dated 14-11-1991 by the plaintiff, as alleged ? OPD

 

10. Whether the plaintiff is entitled to any amount. If so, how much and from whom ? OPP

11. To what rate of interest is the plaintiff-Bank entitled to ? OPD

12. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case. My findings on the above issues are as under:

Issue No. 2.

7. The defendants Nos. 2 and 4 have objected to the territorial jurisdiction of this Court on the ground that the present suit being under Order 34, Code of Civil Procedure, for the foreclosure and sale of the alleged mortgaged property situated at Jagadhari is not maintainable before this Court and that only Civil Courts at Jagadhari in the State of Haryana have the jurisdiction in view of Section 16(c) of the Code of Civil Procedure.

8. Clause (c) of Section 16 of the CPC prescribes that subject to the pecuniary or other limitations prescribed by any law, suits for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. According to this Section, therefore, the suit for foreclosure or sale of a mortgage property situate outside the jurisdiction of this Court shall not be triable by it.

9. Learned counsel for the plaintiff, on the other hand, by placing reliance on Section 120 of the Code of Civil Procedure, has contended that the provisions contained in Section 16 of the CPC are not applicable to the High Court in the exercise of its original civil jurisdiction and, as such, the present suit is maintainable before this Court.

10. There is no merit in the contention raised by the learned Counsel for the plaintiff. A Division Bench of this Court in State of Himachal Pradesh v. M/s. Bhagwan Finance Corporation (Pvt.) Ltd. 1980 Sim LC 294, has categorically held that the provisions contained in Section 16 of the CPC do apply to this Court in exercise of its original civil jurisdiction.

11. State of Bank of India Vs. O.P. Gupta and others, a suit was filed by the State Bank of India for the recovery of certain sums based on cash credit facility granted to the defendants therein, under Order 34 of the Code of Civil Procedure. The immovable property in respect of which an equitable mortgage was created by the defendant as collateral security was situated at Mathura. An objection as to territorial jurisdiction of Delhi High Court with regard to mortgage property situate at Mathura was taken by the defendant. The Delhi High Court by holding Section 16 of the CPC would apply, dismissed the suit of the plaintiff-Bank and it was held that such a suit could be filed only before civil Court at Mathura (U.P.).

12. A similar question also arose before the Kerala High Court in Mrs. Rosy

 

Joseph and Others Vs. Union Bank of India, Ernakulam Branch, In the said case before Kerala High Court, the Union Bank of India, had filed a suit for recovery of Rs. 28,153.75 with interest by the sale of immovable property on the basis of transaction of a mortgage by deposit of title deeds. The mortgaged properties were situated within the local limits of jurisdiction of subordinate Court at Cochin, whereas the suit was filed before the subordinate Court at Ernakulam. It was held that in view of the provisions contained in clause (c) of Section 16 of the Code of Civil Procedure, the language of which is explicit and mandatory, the suit could have been filed only before the civil Court within whose limits of jurisdiction the immovable properties were situated. It was further held that once a suit is directly governed by Section 16(c), the provisions contained in Section 20 of the CPC cannot be called for aid and it is not permissible for the plaintiff to institute the suit in any Court other than the one within the local limits of whose jurisdiction the mortgaged properties are situate.

13. The ratio laid down by the High Court of Delhi and the Kerala High Court in the above-referred to cases with which I am in full agreement, applies to the facts of the present case on all fours.

14. Admittedly, in the present case, the immovable property regarding which an equitable mortgage was created by defendant No. 4 as a collateral security for loan advanced by the plaintiff-Bank is situated at Jagadhari in the State of Haryana. Therefore, a suit for foreclosure or sale of such mortgage property could be instituted only before civil Court at Jagadhari in the State of Haryana and not before this Court in view of explicit and mandatory provisions contained in Clause (c) of Section 16 of the Code of Civil Procedure. The issue is accordingly decided in favour of the defendants.

Issues 1 and 3 to 11.

15. In view of my findings on issue No. 2 above, that this Court had no jurisdiction to try the present suit, these issues cannot be gone into in view of the ratio laid down by the Apex Court in Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar,

Relief.

16. As a result of above discussion and my findings on issue No. 2 that this Court had no jurisdiction to try the present suit, it is ordered that the plaint of the suit be returned to the plaintiff under Order 7, Rule 10, CPC for being presented to the proper Court. No orders as to costs.