(1995) 01 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 706 of 1995 (Arising out of S.L.P. (C) No. 4850 of 1993)

Central Bank of India APPELLANT

Vs

M/s. Shivam Udyog and others RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12

Citation : AIR 1995 SC 711 : (1995) 1 JT 361 : (1995) 1 SCALE 142 : (1995) 2 SCC 74 : (1995) 1 UJ 303

Hon'ble Judges : S. B. Majmudar, J;R. M. Sahai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.M. Sahai, J

1. This appeal is directed against judgment and order of the Allahabad High Court. The appellant, a bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 had filed a suit for recovery of Rs. 8,86,864/- together with costs and interest against respondent Nos. 1 to 5. It was contested by respondent Nos. 1 to 4. It proceeded exparte against respondent No. 5 who had deposited the title deeds of his property over which equitable mortgage was created for repayment of the dues. The house of respondent No. 5 which was offered as security is situated at Ghaziabad. Therefore, the suit was filed at Ghaziabad. An application under Order 11 Rule 12 of the CPC was filed by respondent Nos. 1 to 2 for summoning of the departmental proceedings against the employees of the bank as they had come to know that departmental proceedings had been initiated against the official for creation of the mortgage. The application was dismissed by the Trial Court but the order was recalled on review as if no mortgage was created by defendant No. 5 then the court at Ghaziabad shall have no jurisdiction to proceed with the matter. It was held that enquiry/proceedings regarding the equitable mortgage

were the only material which could throw light over the matter in dispute. It was observed that the defendants were entitled to claim that no equitable mortgage was created and, therefore, the court had no jurisdiction to proceed with the suit. In appeal the order was maintained.

2. The suit being for enforcement of the security, it could be filed only where the property is situated. In case the defendants desired to raise the question of jurisdiction as the mortgage was fictitious, they could do so. But for that it was not necessary to summon the disciplinary proceedings pending against the bank official even if one of the charges is that the security furnished by defendant No. 5 was fictitious. It could be established by leading evidence and cross-examining the witnesses. In our opinion, the defendants have by this method attempted to delay the proceedings. We do not propose to say any further as any observation made by us may prejudice the case of parties.

3. In the result, this appeal succeeds and is allowed. The orders passed by the two courts below are set aside and the application filed by the respondents to summon the enquiry proceedings is dismissed. The suit shall now proceed with liberty to respondents to lead evidence that the mortgage deed was fictitious.

