(2012) 02 DEL CK 0324

In the Delhi High Court

Case No : Regular First Appeal No. 265 of 2010

Corporation Bank APPELLANT

Vs

Shri Pushp Kumar Mittal and Others RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Registration Act, 1908 — Section 17(1), 49

Citation : (2012) 02 DEL CK 0324

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ajant Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.

C.M. Nos. 22852-53/2011

There is no appearance on behalf of legal heirs of respondent No. 3 in spite of service. For the reasons stated in the applications, these applications are allowed.

Applications stand disposed of.

RFA No. 265/2010

1. The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 17.12.2009 decreeing the suit of the appellant/plaintiff-bank for recovery of money, however, the appellant/plaintiff-bank was denied entitlement to the sale of mortgaged property on the ground that no mortgage was proved with respect to the credit facility for which the suit was filed. The facts of the case are that the appellant/plaintiff granted a cash credit facility to the defendant No. 1/ respondent No. 1 on 7.3.1996 for Rs. 3,50,000/-. The defendant Nos. 2 to 4/ respondent Nos. 2 to 4 stood as guarantors. The respondent No. 1 executed

various security documents on 7.3.1996. The appellant/plaintiff also prayed for grant of a mortgage decree by claiming that the property bearing No. 1224, Mahal Sarai, Chota Bazar, Kashmere Gate, Delhi was equitably mortgaged with the appellant/plaintiff-bank for the subject cash credit facility.

2. The trial Court, as already stated above, has decreed the suit for recovery of money but has held that there is no mortgage of the property in favour of the appellant/plaintiff-bank for the subject cash credit facility. The trial Court has arrived at this finding by reference to the memorandum, Ex.PW1/8, dated 24.12.1993 as not stating that the subject memorandum pertains to the subject facility. The trial Court also held that the said memorandum since it creates interest in an immovable property was bound to be registered u/s 17(1)(b) of the Registration Act, 1908 and therefore in the absence of the registration it could not be looked into as per Section 49 of the Registration Act.

3. Learned counsel for the appellant argued that the memorandum Ex.PW1/8 refers to the facility of M/s. P.K. Corporation which is the sole proprietorship of defendant No. 1 and therefore it must be held that there was a valid mortgage in favour of the appellant/plaintiff-bank. Learned counsel also relied upon the continuity letter, Ex.PW1/14 qua the mortgage for the subject credit facility.

4. In my opinion, the trial Court has clearly erred in declining the benefit of the mortgage to the appellant/plaintiff-bank inasmuch as the appellant/plaintiff-bank proved and exhibited the continuity letter, Ex.PW1/14 which clearly provides that the title deeds are to be held with respect to all the dues which are payable to the appellant/plaintiff-bank. This continuity letter, Ex.PW1/14 reads as under:-

CONTINUITY LETTER

From: K.K. Aggarwal

R24, Mahal Sarai,

Chota Bazar,

Kashmere Gate

Delhi

To

The Manager,

Corporation Bank

Chandni Chowk Branch,

Delhi.

Dear Sir,

I/We have already deposited my/our title deeds relating to my/our properties at survey no. 1224, Mahal Sarai at Chota Bazar village Kashmere Gate Delhi district of the extent of about______ with you as a security and have confirmed the deposit of the same as per the memorandum of deposit of title deeds dated 24.12.93.

This is to confirm that as already stipulated in the said memorandum you are to hold and continue to hold the said title deeds as security for the repayment of all monies or any money that is already due to you or that may become due to you hereafter on account of whatsoever business transactions between your bank and me/ourselves.

Place: Chandni Chowk, Delhi

Date: 7.3.96

Yours faithfully,

Signature

I may, at this stage, note that the respondents/defendants did not examine even a witness in support of their case, and this is another reason why the case as set up by the appellant/plaintiff-bank should be believed. Even assuming that the original memorandum of deposit of title deeds, Ex.PW1/8, required registration, however, it cannot be said that the continuity letter Ex.PW1/14 requires registration and when this is read with the oral evidence led on behalf of the appellant/plaintiff-bank, it has to be held, more so in the absence of any evidence led by the defendants, that the appellant/plaintiff-bank proved the equitable mortgage with respect to the subject facility. In view of the above, appeal is allowed. The appellant/plaintiff-bank will be entitled to a preliminary mortgage decree in terms of Order 34 CPC with respect to the amount which has been decreed in favour of the appellant/plaintiff-bank by the judgment and decree dated 17.12.2009. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.