(2008) 11 DEL CK 0105

In the Delhi High Court

Case No : Regular First Appeal 121 of 2005

Mangat Ram and Others APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Citation : (2008) 11 DEL CK 0105

Hon'ble Judges : Pradeep Nandrajog, J;J.R. Midha, J

Bench : Division Bench

Advocate : J.P.Verma, for the Appellant; Jawahar Chawla, for the Respondent

Judgement

Pradeep Nandrajog, J.—Learned Counsel for the appellants urges that only two contentions are being pressed by him and notwithstanding various grounds urged in the memorandum of appeal he restricts his submission only on two counts.

2. Firstly that appellant No. 1, Mangat Ram, had no concern with the cash credit facility granted by the bank to appellant No. 2, the sole proprietary firm of appellant No. 3, and hence Counsel urges that the impugned judgment and decree dated 27.11.2004 is liable to be set aside vis-?-vis appellant No. 1. Qua appellants No. 2 and 3, Counsel urges that the decree be converted into a simple money decree holding that property No. 16-C, Ground Floor and Second Floor, Dhaka, Kingsway Camp, Delhi was never mortgaged when the cash credit limit was availed of by appellants No. 2 & 3.

3. Relevant facts are that the respondent, State Bank of India, filed a suit alleging that on 11.6.2000, Brij Mohan, appellant No. 3, being the sole proprietor of appellant No. 2, approached the bank and requested for the grant of a cash credit limit in sum of Rs. 5,00,000/- and in respect whereof the appellant No. 1 stood guarantee and furnished, by way of equitable mortgage, collateral security of property bearing No. 16-C, (GF & SF), Dhaka, Kingsway Camp. Alleging that the account became sticky and that Rs. 4,52,550.86 was due, the suit was filed claiming pendente lite and future interest as per agreement between the parties

i.e. @22.5% per annum with quarterly rests.

4. In a joint written statement filed it was pleaded by the appellants that in the name of appellant No. 2, appellant No. 3 had availed of a loan under the "Prime Minister?s Rozgar Yojana? in sum of Rs. 90,000/- and at that time certain blank documents were got signed from appellants No. 1 & 3 which were stated to be utilized for creating documents relating to the alleged cash credit facility. In a nut-shell, vis-?-vis appellant No. 1 he denied having offered any documents by way of equitable mortgage to be retained by the bank pertaining to the alleged cash credit facility granted in the name of appellant No. 2.

5. In the replication, the bank changed tracks and averred as under:

....

It is submitted that the said Composite Term Loan was of Rs. 95,000/-, was sought and granted to defendant No. 2 in his personal name, whereas C.C. Limit was granted to the tune of Rs. 5 Lacs as per request of the defendant No. 2 contained in its Loan Application dated 03.03.2000. The defendant No. 2 is fully aware about the same and even otherwise the Loan Documents placed on record clearly show the same in regard to the debt taken by the defendants from the Bank. The Composite Term Loan earlier to C.C. Limit is of no consequences after the grant of a higher credit facility as requested by the defendants. The Plaint is correct and based upon genuine documents.

6. Since limited issues are debated today, in appeal, we note the relevant relatable issues pertaining thereto, being Issue No. 2 and 4. The same read as under:

2. Whether the defendant No. 3 had furnished collateral security by depositing the title deeds of his property No. 16-C (GF & SF). Dhaka Village, Kingsway Camp, Delhi to secure the alleged credit facility of Rs. 5 lakhs granted by plaintiff to defendant No. 1? OPP

4. Whether the defendant No. 3 had kept his property bearing No. 16-C, Dhaka Village, Kingsway Camp only to secure the alleged loan of Rs. 90,000/- availed by defendants No. 1 & 2 on 23.3.2000 as alleged in para 2 of preliminary objections in WS? OPD

7. The evidence on record pertaining to said issues is the statement of PW-1, Sh. K.S. Saxena the Chief Manager of the bank who has proved Ex.P-1 to P-14, all documents relatable to the cash credit limit. The witness has deposed that appellant No. 1 created the equitable mortgage of his property by depositing the sale deed thereof.

8. During cross examination the witness admitted that no sale deed was submitted to the bank when the equitable mortgage was created he stated that the document of title was a partition deed Ex.DW-1/PX4.

9. The only document evidencing the creation of an equitable mortgage is

Ex.PW-1/5 a letter written by appellant No. 1 to the bank.

10. Appellant No. 1 who examined himself as D-1 stated that he deposited the title deed i.e. the partition deed in question when his son availed a loan under the "Prime Minister?s Rozgar Yojana? and had then submitted the affidavit Ex.P-6 dated 18.3.2000. Pertaining to the letter Ex.P-5 he stated that the said letter was written by hand by Sh. K.S. Saxena the Manager of the bank and he only signed the same.

11. With reference to the letter Ex.P-5 finding returned by the learned Trial Judge is that appellant No. 1 created an equitable mortgage of his property pertaining to the grant of the cash credit facility.

12. We have repeatedly questioned Sh. Jawahar Chawla, Counsel for the respondent whether there is any document on record, other than P-5 which evidences that appellant No. 1 consented to the creation of an equitable mortgage of his house qua the cash credit facility granted by the bank to appellant No. 2. Learned Counsel concedes that there is none.

13. It is not in dispute that appellant No. 3, son of appellant No. 1 carries on business as the sole proprietor of M/s. Aggarwal Store. It is also not in dispute that somewhere in the month of March, 2000 he had applied under the "Prime Minister?s Rozgar Yojana? to be granted a term loan and while sanctioning the term loan the respondent bank wanted a collateral security of some immovable property and that appellant No. 1 furnished the partition deed Ex.DW-1/PX4 whereunder, at a family partition House No. 16-C, Dhaka, Kingsway Camp fell to his share. Along therewith he submitted an affidavit dated 18.3.2000, Ex.P-6 affirming that the said property was free from all source of encumbrances and that he abided by the terms and conditions on which the term loan was to be sanctioned in the name of his son.

14. The case of the bank is that in June 2000 a cash credit facility in sum of Rs. 5,00,000/- was additionally granted by it in the name of sole proprietary firm of appellant No. 3. The documents relatable to the said cash credit limit are Ex.P-1, P-2, P-3 and P-4. All executed on 28.6.2000. The said documents are a demand promissory note executed by appellant No. 1 and appellant No. 3. A DP Note Delivery Letter executed by appellant No. 1 and appellant No. 3. A guarantee letter executed by appellant No. 1 agreeing to repay any outstanding amount pertaining to the cash credit facility and an arrangement letter.

15. Ex.P-5 is a letter written by appellant No. 1 which reads as under:

To

Branch Manager Delhi SBI, Vijay Nagar 28.6.2000 Delhi - 9 Sir,

I am writing this to confirm that I have deposited with you on title deed relating to my property at C-16, Dhaka, Delhi-9 described below (hereinafter referred to as the said property) with the intention of creating on equitable mortgage on the said property by way of collateral security for the amounts due to the bank from me under the following credit facilities granted to S.R. Aggarwal Stores by the bank.

TL granted to M/S Aggarwal Store, C-16, Dhaka, Delhi-9.

The said property is self-occupied and as such else has any interest in the said property. The said property is under my sole occupation. There is no subsisting agreement for the sale of the said property nor has any prospective or any intending purchaser taken possession on of it or a part of it. The said property is free from encumbrances.

Sd/-

Mangat Ram

(Note: The errors of syntax and grammatical errors are as per the letter Ex.P-5 which has been reproduced verbatim)

16. Ex.P-5 is self-speaking. It nowhere records the consent of appellant No. 1 for the already mortgaged property to be further mortgaged for the cash credit limit agreed to be extended by the bank to appellant No. 3. The opening part of the letter shows that appellant No. 1 has merely confirmed the deposit of the title deeds with the bank for creating an equitable mortgage and has expressly stated that the said mortgage was for the term loan (TL) granted by the bank to his son.

17. The only term loan granted by the bank is the loan under the "Prime Minister?s Rozgar Yojana?. We have repeatedly asked Sh. Jawahar Chawla Learned Counsel for the bank as to how, in the absence of Ex.P-5 referring to the cash credit facility, can be treated as a consent to extend the mortgage to the said facility. Except for stating that the same is implied, Counsel could urge no further.

18. We accordingly hold that the respondent has failed to prove that for the cash credit facility in question granted by the bank to appellant No. 3 in June 2000 the mortgage created by deposit of title deeds in the month of March 2000 pertaining to the loan sanctioned by the bank in favour of appellant No. 3 under the "Prime Minister?s Rozgar Yojana? was agreed to be extended to secure the recovery of the outstanding amount under the cash credit facility.

19. But, appellant No. 1 cannot go scot free because of Ex.P-3. He is a signatory to the guarantee dated 28.6.2000 which clearly records his obligation to pay the amount outstanding to the bank pertaining to M/s. Aggarwal Stores, the sole proprietary firm of his son, appellant No. 3.

20. The net result is that the suit of the bank has to be decreed as a simple money suit and no decree has to be passed as envisaged by Order 34 of the CPC 1908.

21. The appeal stands disposed of modifying the impugned judgment and decree dated 27.11.2004 and decreeing the suit by passing a simple money decree in

favour of the respondent and against the appellants whose liability shall be joint and several in sum of Rs. 4,52,550.86 together with interest at the rate awarded by the learned Trial Judge.

22. No costs.