(2009) 01 DEL CK 0064

In the Delhi High Court

Case No : CM (M) No. 283 of 2007

Oriental Bank of Commerce APPELLANT

Vs

Ginni Plastic Industries and Others RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 157 DLT 46 : (2010) 8 RCR(Civil) 1263

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Balvinder Ralhan, for the Appellant; Sonal Jain and Umesh Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Manmohan, J.—The present petition has been filed by the plaintiff/petitioner Bank under Article 227 of the Constitution of India for setting aside the order dated 24th May, 2006 passed by Additional District Judge, Delhi in Civil Suit No. 711 of 1995 by virtue of which the respondent/defendant''s application under Order XI Rule 14 of the Code of Civil Procedure, 1908 (hereinafter to be referred as ''CPC'') had been allowed and the petitioner was directed to produce on record certain documents.

2. It is pertinent to mention that the respondents had filed an application under Order XI Rule 14 CPC for summoning the following documents in original:

(a) Transfer voucher of cheque No. 518286, cheque No. 518285, cheque No. 518287 dated 24.04.1992 in the current account of Ginni Plastics Industry.

(b) Loan documents files of following firms:

(i) M/s. Nath Industries

(ii) M/s. K.S. Enterprises

(iii) M/s. Trendy Fashions

(iv) M/s. Deepakshi Industries

(v) M/s. Ruchika Enterprises

(vi) M/s. Manku Enterprises

(vii) M/s. Durga Industries

(viii) M/s. Simpo Builders

(ix) M/s. Jean and Gerkan

(c) Original cheque No. 215287 dated 24.04.1992.

(d) Original Sale Deed dated 20.4.92 of the mortgaged property of the defendant No. 2.

(e) Rules and regulations of the plaintiff Bank for the creation of equitable mortgage.

3. The said application was allowed by the trial court vide its order dated 24th May, 2006. The relevant portion of the said order is reproduced hereinbelow for ready reference:

I have assessed the rival contentions of both sides. So far transfer of voucher of three cheques are concerned, there is no reply on behalf of plaintiff; so far original cheque 518287 is concerned, the same is stated to be subject matter of various inquiries, however, the reply does not account or refer the details of such inquiries, otherwise if the cheque is matter of inquiry, I think there is no bar for its production in the court. In paragraph 5 of the original plaint there is a reference of original sale deed being deposited to the plaintiff bank and it was also confirmed in the replication; further the photocopies have been filed as true copies of the record/sale deed by the plaintiff and it appears that the same is an active or constructive possession of plaintiff bank; it can also be produced in the court. The plaintiff bank is a Nationalised Bank and it is but natural that record of all the accounts are kept or maintained by the bank under certain regulations, therefore the plaintiff bank would not escape merely stating that the accounts of five organizations referred herein above are not available today with the plaintiff bank or there is no documents with the plaintiff bank, in fact it appears from the reply that plaintiff bank had not only the knowledge but also about the facts that such organizations were maintaining the loan accounts/documents but as on today the same is not available. Being a financial institution or bankers, the plaintiff can produce such record. So far loan documents of M/s K.S. Enterprises or M/s Durga Industries are concerned, the reply does not suggest either the Goshwara number or the date of decision or hearing and it would not help the plaintiff to call such record if lying in the court. Therefore plaintiff bank is directed to furnish such details qua M/s K.S. Enterprises and M/s Durga Industries. Lastly, so far loan documents of M/s Nath Industries is concerned the plaintiff bank in its earlier reply dated 08.02.2005 had stated that loan documents are in its possession but now it has been stated as if the same are lying in OA No. 3787/95 before Ld. DRT-I (RC 11020) however no particulars of date of hearing or date of decision is furnished. Therefore defendant''s application is allowed with directions to the defendant to furnish documents as well as particulars in terms of letter and spirit of order passed today as well as in terms of Rule 14 of Order 11 CPC on the next date of hearing i.e. 06.09.2006 failing which case will proceed as per law.

4. The learned Counsel for the petitioner contended that the documents asked for by the respondent/defendant are irrelevant and unconnected to the controversy in the present suit. He has further drawn my attention to the equitable mortgage document executed by the respondent/defendant. Under the description of ''Title Deed'', a Partition/ Division Deed executed on 13th March, 1992 between the respondent/defendant and his brother is referred to. Learned Counsel for the petitioner has further drawn my attention to another suit filed by the petitioner Bank against the respondent/defendant in the case of M/s Durga Industries where the same mortgage document is referred to and it has clearly been stated in that plaint that the document deposited to create the mortgage, was a Partition/Division Deed accompanied by a photocopy of the Sale Deed. He has further pointed out that in the written statement filed by the respondent/ defendant in the case of M/s Durga Industries, it has been admitted by the said defendant that he had mortgaged his share of the property by submitting copies of the Partition Deed of the property along with site plan, valuation report of the property etc. Consequently, learned Counsel for the petitioner Bank submitted that where was the question of respondent/defendant now asking for production of the original Sale Deed.

5. Learned Counsel for the petitioner Bank also pointed out that the respondent/ defendant had even earlier filed an application under Order XI Rule 14 CPC for production of account of M/s Nath Industries, complete record of Central Vigilance Commissioner''s report against Bank Manager, Mr. Ravinder Yadav and the action taken report by the plaintiff Bank. Though initially the said application had been rejected but in appeal proceedings, the said documents were directed to be given to the respondent/defendant and the said order has been complied with. Learned Counsel for the petitioner Bank referred to and relied upon the judgment of Hon''ble Supreme Court in Central Bank of India Vs. M/s. Shivam Udyog and others, , wherein it has been held as under:

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 no propose to say any further as any observation made by us may prejudice the case of parties.

6. Learned Counsel for the respondent/defendant referred to the original plaint filed by the petitioner Bank wherein it has been stated that the original Sale Deed had been deposited by the respondent/defendant for creation of equitable mortgage. He submitted that after lapse of thirteen years, the petitioner Bank cannot now turn around and say that it is not in possession of the original Sale Deed.

7. Learned Counsel for the respondent/defendant further alleged that Mr. Ravinder Yadav, who was a Manager in the petitioner Bank, had taken the respondents'' original Sale Deed and deposited it in the account of various companies owned and controlled by one Mr. S.N. Sharma and his wife including Durga Industries and in lieu of deposit of the said Sale Deed, the Bank had granted various loan facilities to the said companies. In this context, learned Counsel for the respondents relied upon the testimony of Mr. Ravinder Yadav in the trial court.

8. On a perusal of the pleadings before the trial court, this Court finds that the respondent/defendant has clearly admitted in the written statement that not only it had taken a loan for the sum of Rs. 5,00,000/- from the petitioner Bank but also, it had paid a sum of Rs. 2,00,000/- to the petitioner''s Manager for ''arranging'' the said loan. The relevant paragraph of the written statement filed by the respondent/defendant is reproduced hereinbelow for ready reference:

Para No. 2 of the plaint is admitted to the extent that the defendants approached the plaintiff bank and sought financial assistance for its business under the name and style of defendant No. 1. It is also not disputed that the plaintiff bank sanctioned limit of Rs. 5,00,000/- to the defendants. The personal guarantee of defendant No. 4 was not furnished by the answering defendants, and it was arranged or manipulated by the then Senior Manager of the bank Shri Ravinder Yadav, who was having intimate relations with defendant No. 4, in order to cause wrongful gain to himself and the said defendant and the defendants were paid only a sum of Rs. 3,00,000/- against the sanctioned limit of Rs. 5,00,000/- and a sum of Rs. 2,00,000/- was obtained by the then Senior Manager of the bank, and this fact was brought to the knowledge of the Regional Office of the bank on 4.3.1994 and also later on in reply dated 8.12.1994 and notice dated 10.12.1994.

9. In the present case, once the factum of loan is admitted by the respondent/ defendant then it is not understood as to how production of documents with regard to other loan transactions between the petitioner/plaintiff Bank and the respondent/ defendant or third companies would help the trial court in adjudicating the matter in dispute in the present suit. Even if the respondent/ defendant''s case is accepted that the title document has been misused by the petitioner/plaintiff Bank while advancing loan to third companies, then the said defence would not advance the case of the respondent/defendant in the present case as those other transactions are neither relevant nor a subject of dispute in the present proceedings.

10. It is further settled law that before giving a direction to a party to discover and produce a document, the Court has to be satisfied that the document in question is relevant for proper adjudication of the matter involved in the suit and further the privilege conferred under Order XI Rules 12 and 14 of CPC is not being used for purposes of a roving or fishing enquiry refer to J.S. Construction Pvt. Ltd. Vs. Damodar Rout, .

11. This Court also finds that in an enquiry proceeding Mr. Ravinder Yadav was charged with unauthorizedly sanctioning various credit facilities to various commercial firms including M/s Durga Industries, M/s Ginni Plastic Industries and M/s Nath Industries. During the enquiry, Mr. Ravinder Yadav had admitted his guilt and accepted the charges unconditionally.

12. Consequently, from the averments contained in the respondents written statement as well as the enquiry report of the Central Vigilance Commissioner, it is apparent that the respondent/defendant had admittedly taken credit facilities from the petitioner Bank and further that the respondent/defendant was in collusion with the previous Manager of the petitioner Bank.

13. Therefore, this Court is of the view that the application filed by the respondent/defendant was totally irrelevant to the controversy to be decided in the suit at hand and further that the said application had been filed only to delay the disposal of the suit. Consequently, the present petition is allowed and the impugned order dated 24th May, 2006 is set aside and the trial court is directed to dispose of the suit by the end of this calendar year.

