
(2007) 10 DEL CK 0283

In the Delhi High Court

Case No : C.M. (M) No's. : 1457 of 2005

State Bank of India

APPELLANT

Vs

Bronx Pharmaceuticals and Others

RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14, 151, 30
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 65

Citation : (2007) 8 ILR Delhi 159 Supp

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Sanjiv Kakra, for the Appellant; Jos Chiramel with Mr. R.K. Tripathi, for the Respondent

Final Decision : Disposed Off

Judgement

J.M. Malik, J.—This petition under Article 227 of the Constitution of India is directed against the order dated 4.12.2004 dismissing two applications filed by the petitioner/bank one under Order 7 Rule 14 read with Section 151 CPC and another application u/s 65 of the Indian Evidence Act read with Sections 30 and 151 of CPC. The transaction was of equitable mortgage as the respondents had obtained some loan from the bank. The petitioner bank had filed a suit for recovery of Rs. 2,70,152.26/- against the respondents. I have heard counsel for the parties. Counsel for the respondent pointed out that the above said suit was filed in the year 1979. The title deeds did not see the light of the day uptil now. The above said title deeds were not submitted along with plaint as per requirement of law. On 7th October, 1998, Mr. T.P. Gupta, bank employee was cross-examined. He was asked to produce title deeds but the needful was not done. Thereafter he was again examined on 8th July, 2002 but the title deeds were not produced on that date as well. Counsel for the respondent further submitted that the case was fixed for final arguments and he had submitted written arguments as well. He pointed out that the plea raised by the petitioner

Bank that it had handed over the original documents to their previous counsel M/s. Amarchand & Mangaldas & Suresh A Shroff and Company, on its face, appears to be false. Petitioner has failed to explain when the original documents were handed over to M/s. Amarchand & Mangaldas & Suresh A Shroff and Company and when did they misplace the said documents. The last submission made by counsel for the respondents was that the petitioner has filed photo copies of the title deeds at the time of final arguments. He explained that photo copies are not per se admissible in evidence.

2. On the other hand, counsel for the petitioner submitted that original documents were given to their previous counsel M/s. Amarchand & Mangaldas & Suresh A Shroff and Company but they lost the documents. The applications of the petitioner is supported by an affidavit filed by Mr. K.N. Mitra, Branch Manager, State Bank of India. It must be borne in mind that the case of the petitioner is supported by an affidavit filed by Mr. K.N. Mitra, Branch Manager, State Bank of India. The same remains unrebutted on the record. To my mind, there lies no rub in allowing these applications even if the case is pretty old one. Since the public money is involved and therefore the grouse of delay can be met by payment of adequate costs. In the light of discussion and in the interest of justice, I allow the petition, permit the petitioner to lead the secondary evidence on 12th November, 2007, subject to payments of Rs. 10,000/- as costs, out of which 50 per cent be deposited with Delhi High Court Mediation and Conciliation Centre, UCO Bank Account No. 48852, within two weeks. Trial Court is further directed to give an opportunity to respondents to rebut the above said evidence. No other opportunity shall be granted to the petitioner.

Petition stands disposed of.

Copies of this order be given dasti to both the parties. A copy of this order be sent to Trial Court forthwith.