
(1997) 05 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 18186 of 1997

V.S. Stone Crushers and Others

APPELLANT

Vs

VIth Additional District Judge and Others

RESPONDENT

Date of Decision : 26-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16
Constitution of India, 1950 — Article 226

Citation : (1997) AWC 321 Supp

Hon'ble Judges : R.K. Mahajan, J

Bench : Single Bench

Advocate : G.L. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

R.K. Mahajan, J.—This is a writ petition in the nature of certiorari quashing the judgment and order dated 30.4.1997 (Annexure 6 to the writ petition) passed by Respondent No. 1 and order dated 10.5.1996 (Annexure 5 to the writ petition) passed by Respondent No. 2.

2. The Petitioners are loanee. Respondent No. 3 is a Bank. Equitable mortgage was created in Kanpur Nagar. The Bank has filed a suit for recovery of Rs. 2,52,885 together with pendente lite and future interest in the court of Civil Judge, Senior Division, Kanpur Dehat. There was also a prayer for realisation of money from mortgaged property. The only point which was canvassed before the lower court, was that equitable mortgage was created at Kanpur Nagar and the suit could not have been filed in Kanpur Dehat. An application u/s 68(2) was filed by the Defendants-Petitioners which was rejected by the learned IInd Additional Civil Judge (Senior Division), and also by learned VIth Additional District Judge in revision. Aggrieved by the aforesaid orders, the Petitioners have filed this writ petition under Article 226 of the Constitution.

3. Learned Counsel for the Petitioners submitted that there is no notification

regarding equitable mortgage in Kanpur Dehat and suit does not lie at Kanpur Dehat. Admittedly the parties belong to Kanpur Nagar.

4. Shri K. L. Grover, learned Counsel for Respondent No. 3 submits that the property of the Petitioners is situated at Kanpur Dehat, therefore, the remedy left for the Plaintiff-Respondent was to file a suit in Kanpur Dehat in view of Section 16(c) of the Code of Civil Procedure.

5. Section 16(c) of CPC is quoted hereunder below:

16. Suits to be instituted where subject-matter situate.--Subject to the pecuniary or other limitations prescribed by any law, suits:

(a) ...

(b) ...

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property.

(d) ...

(e)...

(f) ...

shall be instituted in the court within the local limits of whose jurisdiction the property is situate.

6. I fully agree with the submission made by the learned Counsel for the Respondent. Mere creation of equitable mortgage at Kanpur Nagar is immaterial and the Bank cannot be left without the remedy especially when the property is situated at Kanpur Dehat. There is no jurisdiction error or abuse of process of law.

7. Shri Grover, learned Counsel for Respondent No. 3 relied upon a decision rendered in the case of Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, , wherein it has been held that when suit is pending between the parties the interim and miscellaneous orders passed by the trial court cannot be challenged by way of writ petition under Article 226 of the Constitution of India.

8. In the aforesaid facts and circumstances, the writ petition lacks merit and is accordingly dismissed at the admission stage itself.