

+ **OMP No.36/2008**

RAKHI Petitioner

Versus

Through: Ms. Gurmeet Bindra, Advocate

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

2 It is the case of the respondent that the petitioner, her
husband and father-in-law had approached the respondent for a loan

and in this regard entered into an agreement with the respondent and wherein the petitioner and her husband and father-in-law were described as borrowers. Besides the said agreement, the petitioner and her husband and father-in-law are also stated to have signed several other documents qua the said loan i.e. a declaration, demand promissory note, power of attorney, and a memorandum of entry qua creation of equitable mortgage of the property aforesaid. It is further the case of the respondent that the loan amount under the said documents was disbursed by crediting the same in the bank account with the Indian Bank in the name of the husband of the petitioner. The agreement stated to have been signed, provided for adjudication of all disputes and differences arising out of and /or with respect to the said transaction by the sole arbitrator to be appointed by the respondent. The said documents of loan transaction are of 23rd April, 2005.

3 It is further the case of the respondent that default having been committed with respect to the said loan transaction and the monies due having remained unpaid, legal notices dated 4th December, 2006 were issued by the respondent to the petitioner, her husband and father-in-law and inspite of which the payments were not made.

4 On the arbitral record are found the separate replies sent in December, 2006 by Mr. S.C. Soren, Advocate representing the petitioner in the present petition, on behalf of the petitioner as well as her father-in-law. The petitioner in the said reply denied any transaction with the respondent and claimed that the property which had been mortgaged was her 'istridhan' and denied that her husband had any right to pledge the same; she also denied having signed any

documents and claimed to have discovered that the documents of her property were missing only when attempt was made to forcibly dispossess her therefrom. In the reply on behalf of the father-in-law of the petitioner, it was stated that the husband of the petitioner had died in April, 2006 in a motor car accident; the father-in-law also denied the loan transaction. In both the replies copies of the documents claimed to have been signed were asked for.

5 The respondent, in the circumstances aforesaid, appointed the arbitrator to adjudicate its claims against the petitioner, her husband and father-in-law. The arbitrator issued notices to all the said persons. It is admitted by the petitioner also that the notice of hearing before the arbitrator was served on the petitioner as well as her father-in-law; they appeared together before the arbitrator. However after so appearing on one of the hearings, they stopped appearing and the arbitrator proceeded ex-parte against them and the award aforesaid came to be published.

6 This petition has been preferred by the petitioner alone. No petition challenging the award has been preferred by the father-in-law of the petitioner. The reason therefor appears to be that the documents which the respondent is holding by way of equitable mortgage, though not found on the arbitral record or on the record of this court are of an immovable property belonging to the petitioner only.

7 It is the case of the counsel for the petitioner that the petitioner and her father-in-law had before the arbitrator also sought copies of the documents relied upon by the respondent and it is contended that the arbitrator had directed the respondent to supply

the said copies but since the respondent failed to supply the copies, the petitioner and her father-in-law stopped appearing before the arbitrator.

8 The case of the petitioner in the objections also is of the denial of loan transaction or of deposit of title deeds of her property. It has also been pleaded in one of the paragraphs of the petition that the petitioner had distanced herself from her husband in the beginning of the year 2005 as her husband had developed unappreciable habits, lavish expenditure, extra-marital relations, and had consequently started neglecting the family. During the arguments the counsel has also argued that the husband of the petitioner had prior to his demise started residing with some other woman in Bahadurgarh. Though the same is not pleaded nor any document filed in support thereof, reliance is placed on the death certificate of the husband at the address of Bahadurgarh.

9 The petitioner having not appeared before the arbitral tribunal and having not pressed the aforesaid pleas before the arbitral tribunal, the objections on those pleas are not now untenable. Reliance in this regard can be placed on recent judgment in ***J.G. Engineers Pvt. Ltd. Vs. N.B.C.C.*** 2008 (4) Arb. LR 578 (Delhi) holding that the petitioner cannot make out a new case in these proceedings and which inspite of opportunity had not been made / pressed before the arbitral tribunal.

10 Even otherwise I do not find the plea of the petitioner to be believable even prima facie. On inquiry the counsel for the petitioner has informed that the petitioner was married to her husband in or about the year 2000. The mortgaged property was

purchased in the year 2004. As per the case set up by the petitioner, at that time the petitioner was residing with her husband in as much as she is claimed to have distanced herself from her husband in the year 2005 only. The counsel for the petitioner has orally argued that the money for purchase of the property was provided by the father of the petitioner. No document in that regard has been produced. It is found highly unlikely that the father of the petitioner would provide the money for purchase of the property when the petitioner was residing with her husband and when her relations with her husband are also stated to have been cordial. On inquiry it is further stated that the petitioner has two children out of the said marriage. However the counsel is unable to give the dates of their birth. It has also been inquired from the counsel whether the petitioner claims a share in the estate of her husband. The answer is again in the affirmative. It is also admitted on inquiry that the petitioner along with her husband was residing in the mortgaged property, though it is claimed that on the petitioner distancing herself, the husband had started living on Bahadurgarh.

11 The factum of the differences between the petitioner and her husband is also falsified from the petitioner and her father-in-law engaging the same advocate to give reply to the legal notices in December, 2006 and also appearing together before the arbitrator, though now at time of hearing differences are alleged.

12 In all the aforesaid circumstances it appears that the pleas of the petitioner being not aware of the loan transaction are only to avoid the recovery of the loan taken from the mortgaged property. Else in the objections, the receipt of loan amount by the husband is not disputed. The loan transaction is of 23rd April, 2005. It has not

been stated as to who operated the bank account in which the loan amount was credited, what was the balance in the said account on the date of the demise of the husband of the petitioner and who withdrew the monies if any in the said account on the demise of the husband.

13 I have also perused the signatures on the loan documents and the signatures of the petitioner in the present petition. There appears to be sufficient identity between the two sets of signatures.

14 In the aforesaid circumstances no merits are found in the petition under Section 34. The same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

August 13, 2009
J