

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Reserved on: January 9th, 2009

Date of Decision: January 21st, 2009

CM(M) 716 of 2007

Oriental Bank of Commerce Petitioner
Through: Mr. Balvinder Ralhan, Advocate.

versus

M/s Ginni Plastic Industries & Ors. Respondents
Through: Mr. Sonal Jain and Mr. Umesh
Chaudhary, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the 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 |

J U D G M E N T

MANMOHAN, J

1. The present petition has been filed by the plaintiff/petitioner Bank under Article 227 of the Constitution of India for quashing the order dated 26th April, 2006 whereby the trial court has dismissed the petitioner's application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC').

2. In response to the respondent/defendant's application seeking production of the original Sale Deed of the mortgaged property, the petitioner/plaintiff Bank sought an amendment of its plaint by pointing out that the property had been mortgaged only by deposit of Partition Deed and valuation report.

3. The trial court rejected the said application for amendment on the ground that it was being sought at a belated stage and that too, after closure of plaintiff's evidence in which the plaintiff's manager Mr. Ravinder Yadav, PW1 had admitted that the original Sale Deed had been deposited with the petitioner Bank.

4. Learned counsel for the petitioner pointed out that inadvertently in the mortgage suit filed by the petitioner Bank, it had been mentioned that the original Sale Deed had been deposited by the defendant/respondent No. 2. Learned counsel for the petitioner Bank referred to a copy of the Sale Deed of the said property which shows that the same had been purchased by respondent No. 2 along with his brother. Learned counsel for the petitioner Bank also referred to the Partition Deed executed between respondent No. 2 and his brother which gave clear and marketable title of the property to respondent No. 2. Consequently, learned counsel for the petitioner submitted that mortgage of the said property could never have been created by deposit of Sale Deed as the same had been purchased in joint name. He also referred to a copy of the Mortgage Deed on record which clearly shows that it had been created by deposit of Partition Deed. Learned counsel for the petitioner also referred to the plaint and the written statement filed in the other case of M/s Durga Industries wherein it had been clearly stated and admitted that the mortgage had been created by only deposit of Partition Deed. The averment of the petitioner/plaintiff Bank in the case of Durga Industries is as under:-

"6.....The details of the mortgage property are as under:-

DATE OF MORTGAGE : 24-4-1992
NAME OF MORTGAGOR : SH. BRIJ MOHAN GANDHI
NAME OF MORTGAGEE : ORIENTAL BANK OF COMMERCE
SUM SECURED : RS. 20,18,152.00

*DETAILS OF PROPERTY : 34/113-A, MUKHERJEE NAGAR
EXTENSION, NEW DELHI
BOUNDED AS UNDER:
EAST – GALI
SOUTH – OTHER PROPERTY
WEST – ROAD
NORTH – PROPERTY NO. WZ-34/
113-A.*

*DOCUMENTS DEPOSITED : (a) Memorandum of deposit of
Title Deed dt. 24-4-92.*

*(b) Partition/Division Deed
relating to property WZ-
34/113, Mukherjee Nagar
Extn. New Delhi, registered in
the office of Sub-Registrar II,
Delhi at Sl. No. 7763, Addl.
Book No. 1, Volume No. 1719
on pages 151 to 154 on dated
5-6-72.*

(c) Photo copy of the Sale Deed.

*(d) Non Encumbrance Certificate
Dated 14-4-1992."*

5. The written statement of respondent/defendant herein in the case of Durga Industries reads as under:-

*ii) The Defendant No. 5 agreed to
hypothecate his share of the property bearing
plot No. 113A, WZ-34, Mukherjee Part Extn.,
New Delhi and submitted copies of the
partition deed of the said property along with
site plan, valuation report of the property,
etc....."*

6. Learned counsel for the petitioner submitted that reliance on Mr. Ravinder Yadav's testimony would be of no avail to the respondents as in an enquiry conducted by the Central Vigilance Commissioner, it had been found that Mr. Ravinder Yadav had

unauthorizedly and illegally sanctioned various credit facilities to a number of companies including the respondent.

7. In response, learned counsel for the respondent/defendant submitted that present amendment application could not be allowed as the petitioner Bank had admittedly filed a mortgage suit based on deposit of original Sale Deed. Learned counsel further alleged that Manager of the petitioner's Bank had taken the original Sale Deed of the property and had misused it for advancing various loan and credit facilities to a large number of companies owned, controlled and managed by one Mr. S.N. Sharma and his wife. However, the relevant paragraph of the written statement filed by the respondent/defendant in the present suit 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 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.

(emphasis supplied)"

8. This Court is of the view that the petitioner Bank was justified in seeking the present amendment as from the

mortgaged documents as well as the recovery suit filed in the case of Durga Industries, it would be apparent that the admitted position was that petitioner Bank was not in possession of the original Sale Deed and that the mortgage had been created by the defendant by deposit of only the Partition Deed.

9. Further in the opinion of this Court, reliance by the trial court on the testimony of PW1 is clearly misconceived as from paragraph 2 of the written statement in the present suit as well as from the enquiry report of the Central Vigilance Commissioner, it would be apparent that PW1 was in collusion with the respondents/defendants and had illegally and unauthorizedly granted loan and credit facilities to the respondents/defendants. Consequently, this Court is of the view that the trial court fell in error in rejecting the petitioner Bank's amendment application and, therefore, the said amendment of the plaint is allowed.

10. Consequently, the impugned order is set aside and the present petition is disposed of in the above terms but with no order as to costs.

MANMOHAN, J

January 21, 2009
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