

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 190 of 2015**

Allahabad Bank (unit of Government of India) through the Chief Manager, Vyapar Vihar Branch, Bilaspur, Tahsil and District Bilaspur (C.G.)

---- Petitioner**Versus**

Sharad Sharma S/o Shri Chhotelal Sharma, aged about 40 Years
Caste- Brahman, R/o Village and Post- Gataura, Tahsil Masturi, Distt. Bilaspur (C.G.), second address: Navelty House, Main Road, Vidya Nagar, Bilaspur, Tahsil and Distt. Bilaspur, (C.G.)

---- Respondent

For Petitioner	:	Mr. Malay Bhaduri, Adv.
For Respondent	:	Mr. G.V.K. Rao, Adv.

Order On Board**18/04/2016**

1. With consent of the parties, the matter is heard finally at motion stage.
2. Facts in brief requires for adjudication of the instant writ petition are that Civil Suit No. 43-A/2014 is pending before the court below for decree for the money Rs. 6,97,635/-. The respondent/defendant filed written statement. He also filed an application under Order 7 Rule 11 of the Civil Procedure Code, 1860 (in brevity 'CPC') Annexure P-2 wherein it is prayed that the petitioner/plaintiff has not paid/affixed court fee for the prayer made in para 11B of the plaint and also the civil suit is not valued appropriately hence valuation is defective. Trial court after hearing the parties passed the order dated 5-2-2015 holding that the plaintiff/petitioner has not paid/affixed court fee for the suit land for which he prayed that the same be attached and auctioned towards satisfaction of the decree. The court below by allowing the I.A. No. 1 directed the plaintiff to value the suit land and to also pay appropriate court fee for the same. Against the said part of the order, the plaintiff/petitioner has filed instant writ petition invoking inherent jurisdiction of the court under Article 227 of the Constitution of India on the grounds that against the outstanding amount of Rs. 6,97,635/- plaintiff had filed instant suit for grant of decree and further

prayed that the land mortgaged for the security of the loan be directed to be attached and satisfy the decree by auctioning the same. For the prayer for decree for the amount outstanding the plaint is filed and in support of satisfaction of decree the suit land mortgaged as per law is sought to be attached and auctioned towards satisfaction. Therefore, as per law, plaintiff/petitioner is not required to pay court fee on the suit land as the same is mortgaged. The property has already been mortgaged with the plaintiff for the security of loan and other amount due. The prayer to attach and auction the same to satisfy the decree has been included as per prevailing civil law. They are not required to pay additional court fee for the mortgaged property. Hence the petition may be allowed and that part of the order dated 5-2-2015 be quashed.

3. On behalf of the respondent, written response/objection has been filed in which it is pleaded that since the prayer to attach and sell through auction of the mortgage property was made in the plaint hence plaintiff is required to pay court fee under the provisions of Section 7 of the Court-fees Act, 1870 (in brevity 'Act of 1870'). There is no scope for any interference in the impugned order passed by the trial Court. Instant writ petition may be dismissed as not maintainable.
4. Heard learned counsel for the parties and perused the material annexed along with the instant writ petition.
5. Learned counsel for the petitioner supported the entire petition and the grounds taken and submitted that as the suit is a money suit, the plaintiff/ petitioner is not required to pay court fee for the mortgaged property and / or to value the said mortgaged property. He had paid appropriate court fee as required under Section 7(i) of the Act of 1870 hence the order passed by the court below is erroneous. Said part of the order may be quashed. It is also prayed that provision of Order 7 Rule 11 of the Code is not applicable. The order requires interference hence the petition may be allowed.
6. Learned counsel for the respondent prayed that since the petitioner/plaintiff has made prayer for attachment and sell of the property by auctioning in the plaint hence he is required to pay court fee as per provisions of Section 7 of the Court fee Act.

7. From perusal of the plaint, it appears that the plaintiff/petitioner had valued the suit for Rs. 6,97,635/- and paid the fixed court fee of Rs. 69,800/-. The plaintiff also pleaded that certain property has been mortgage for the security of the loan as per provisions of law and the said land be attached and auction towards satisfaction of the said money decree. Perusal of the entire plaint goes to show that the plaintiff has filed suit for recovery of amount outstanding and for execution of the same, mortgaged property be auctioned. Mortgaged property is not the suit land. As per provisions of Section 7(i) of the Act of 1870 this is a suit for money. The land in question was mortgaged for security of loan. Court fee as required has been paid on behalf of the plaintiff/petitioner. As the mortgaged land is not suit property on the other hand, the same was for the security of the loan, to satisfy the money decree by the attachment and sell of the mortgaged property said description is mentioned in the para 11B of the plaint, in the considered opinion of this court as this is a suit for recovery of loan amount and other amount due as per said loan transaction for which specific pleadings are in the plaint including prayer that the entire outstanding amount be decreed for its recovery and mortgaged property be also attached and sold through auction as per law and the decree be satisfied with the said sale proceed, I do not see any reason to affirm the part of the order passed by the trial Court. The trial Court committed an error of law by directing the plaintiff to value the mortgaged property and affix the court fee for the same.
8. Consequently, said part of the impugned order dated 5-2-2015 is not sustainable hence the same is quashed by which the court below partly allowed the IA 1 filed by the defendant under Order 7 Rule 11 of the CPC.
9. The petition is allowed. No order as to costs.

(Chandra Bhushan Bajpai)
Judge