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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 132/2013

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3rd November, 2016

FEDERAL BANK LIMITED

..... Appellant

Through: Mr. P.I. Jose and Mr. Nitin Kumar
Singh, Advocates.

versus

ASHWANI KUMAR AND ORS.

..... Respondents

Through: Mr. M.K. Jha, proxy Advocate for
Mr. Arvind Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

**RSA No.132/2013 and C.M. Appl. No. 10347/2013 (for stay, U/S 151
CPC), C.M. Appl. No. 6758/2016 (for modification of Order dt.
23.3.2015)**

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by Federal Bank of India/defendant against the impugned Judgment of the First Appellate Court dated 1.3.2013

decreeing the suit for mandatory injunction filed by the respondents/plaintiffs. Respondent/plaintiffs filed a suit against the appellant/defendant/Bank for mandatory injunction to return the title deeds of the property bearing no. 1/5875, Kabool Nagar, Shahdara, Delhi-110032 on the ground that the title deeds have been illegally retained although the loan with respect to which the title deeds were deposited with the appellant/defendant /Bank stood repaid. The Trial Court dismissed the suit by its Judgment dated 1.11.2012. The First Appellate Court by its Judgment dated 1.3.2013 has set aside the judgment of the trial court and decreed the suit of the respondents/plaintiffs and directed return of the title deeds of the property bearing no. 1/5875, Kabool Nagar, Shahdara, Delhi-110032.

2. The facts of the case are that the respondents/plaintiffs filed the subject suit pleading that one M/s ABI Overseas Limited was granted a loan of Rs.75,00,000/- as a cash credit facility by the appellant/defendant/Bank. Respondents/plaintiffs were guarantors for the cash credit facility and respondents/plaintiffs therefore mortgaged the subject property in favour of the appellant/defendant/Bank as a security for repayment of the loan in the cash credit facility. Respondents/plaintiffs pleaded that the entire amount of Rs.75,00,000/- along with interest stands paid to the appellant/defendant/Bank and therefore the title documents of the subject

property are liable to be returned to the respondents/plaintiffs. Respondents/plaintiffs further pleaded that the Letter dated 23.4.2004 was wrongly obtained by the appellant/defendant/Bank from the respondents/plaintiffs which stated that although loan of M/s ABI Overseas Limited is repaid, however, till the loan given to six other companies stated in the Letter dated 24.3.2004 are repaid, they would not ask for return of the title deeds, which will continue as a charge for the liabilities of the six companies stated in the Letter dated 24.3.2004. It was further pleaded by the respondents/plaintiffs that besides the Letter dated 24.3.2004 having been obtained by undue influence and coercion by the appellant/defendant/Bank, even if this letter is read as creating a mortgage the same would only be for 125 sq. yards as stated in the letter, and not for 1400 sq. yards of land, and which is the figure given by overwriting by hand over the typed figure of 125 sq. yards.

3. The appellant/defendant/Bank contested the suit and pleaded that there was no undue influence and coercion in the respondents/plaintiffs giving the Letter dated 24.3.2004 continuing the equitable mortgage with respect to the liabilities of six other companies as mentioned in the Letter dated 24.3.2004. It is also stated that the equitable mortgage of the subject

property was to continue with respect to 1400 sq. yards and not 125 sq. yards and that the area of 1400 sq. yards is rightly corrected by hand.

4. After the pleadings were complete, the trial court on 25.10.2007 framed the following issues:-

- “i) Whether the plaintiff any cause of action to file the present suit? OPP
- ii) Whether the entire suit property has been mortgaged by the plaintiff in favour of the defendant? OPD
- iii) Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendant to release the tile deeds of the suit property to the plaintiff? OPP
- iv) Relief.”

5. Trial Court by its Judgment dated 1.11.2012 held that there cannot be undue influence and coercion in obtaining of the Letter dated 24.3.2004/Ex.DW1/2 because all the plaintiffs are commerce graduates. Trial court also held that equitable mortgage which continued in terms of the Letter dated 24.3.2004 was for 1400 sq. yards of the property as is found in this Letter dated 24.3.2004/Ex.DW1/2. Trial court also relied upon a letter dated 1.4.2004/Ex.DW1/3 which is written by one Sh. Vipen Parwanda, Director of M/s ABI Overseas Limited stating that the mortgaged property is 1400 sq. yards.

6. The first appellate court has set aside the judgment of the trial court and decreed the suit by drawing the following conclusions:-

(i) The document dated 24.3.2004/Ex.DW1/2, since it created a mortgage, the same had to be attested by two witnesses, but since it is not attested by two witnesses this document Ex.DW1/2 is illegal. The first appellate court also held that the document Ex.DW1/2 dated 24.3.2004 is not a document creating mortgage by deposit of title deeds.

(ii) The letter dated 24.3.2004/Ex.DW1/2 contains clearly an overwriting, cutting the typed figure of 125 sq. yards to 1400 sq. yards and therefore there is a clear doubt on the authenticity of this document, and which therefore cannot be relied upon by the appellant/defendant. The appellate court also refers to the fact that this document Ex.DW1/2 lacks credibility because there is no property number given of the subject property in Ex.DW1/2 and nor are given the details as to what are different liabilities of the six companies stated in this letter Ex.DW1/2 for which the mortgage is continued.

(iii) The letter Ex.DW1/3 written by Sh. Vipen Parwanda cannot be used against the respondents/plaintiffs because the letter Ex.DW1/3 can only bind Sh. Vipen Parbanda or at best M/s ABI Overseas Limited but not the

respondents/plaintiffs who are the owners of the property and only who could have created or extended the mortgage.

7. The following substantial question of law was framed by this Court on 12.7.2013.

“Whether the finding returned by the first appellate court setting aside the finding of the trial court and directing the return of the title deed to the respondent is perverse or not?”

8. This second appeal was admitted for hearing vide Order dated 23.3.2015.

9. There are three issues which call for decision in the present second appeal as to whether the Letter dated 24.3.2004/Ex.DW1/2 was obtained by the appellant/defendant/Bank from the respondents/plaintiffs by coercion and undue influence. The second aspect is that whether the mortgage was only of 125 sq. yards and not of 1400 sq. yards as the figure of 1400 sq. yards has been wrongly overwritten on the typed figure of 125 sq. yards as stated in the Letter Ex.DW1/2 dated 24.3.2004. The third aspect is whether the first appellate court at all was legally justified in drawing its conclusions as stated above that the mortgage was illegal and invalid.

10. The first aspect of coercion and undue influence and the third aspect of the conclusions of the first appellate court are dealt with together. Let me at this stage reproduce paragraphs 8 and 9 of the plaint which talk about the coercion and undue influence in obtaining the Letter dated 24.3.2004 by the appellant/defendant/Bank from the respondents/plaintiffs.

These paras 8 and 9 of the plaint read as under:

“8. That further, in the aforesaid attempt, the Defendant succeeded in obtaining, a letter dated 24.03.2004, issued by the plaintiffs, creating charge over 125 sq. yards of the said property in favour of the Defendant Bank.

9. That the Plaintiffs however upon realizing, the illegal and arbitrary attempt of the Defendant, to justify their refusal of release the said plot, proceeded to issue letter dated 15.06.2004, categorically denying the execution of aforesaid letter dated 24.03.2004, and further establishing that the same had been issued under evident coercion and undue influence.”

11. In support of these paras 8 and 9 of the plaint in the affidavit by way of evidence filed on behalf of the respondents/plaintiffs of the plaintiff no. 1/PW-1/ Sh. Ashwani Kumar it is similarly stated in paras 8 and 9 thereof as under:-

“8. I say that further, in their aforesaid attempt, the defendant succeeded in obtaining a letter dated 24.03.2004, issued by the plaintiffs, creating charge over 125 Sq. Yds. of the said property in favour of the defendant bank. The letter dated 24.03.2004 is exhibited as **EXHIBIT PW-1/2**.

9. that I say that the plaintiffs however upon realizing the illegal and arbitrary attempt of the defendant, to justify their refusal of release of the said plot, proceeded to issue letter dated 15.06.2004, categorically denying

the execution of aforesaid letter dated 24.03.2004 and further established that the same had been issued under evident coercion and undue influence. Letter dated 15.06.2004 is Exhibited as **EXHIBIT PW-1/3.**”

12. In my opinion the trial court has rightly held that this Letter dated 24.3.2004 cannot be said to have been obtained by undue influence and coercion because the plaintiffs are not illiterate persons but businessmen and that too commerce graduates. In fact, this Court would like to add that whenever a person pleads any undue influence or coercion, mere uttering of the words of ‘coercion’ and ‘undue influence’ as if the same were *mantras* is not enough because coercion and undue influence has to be established by showing the existence of detailed facts which will show the existence of coercion and undue influence. Existence of undue influence or coercion is a conclusion from a set of facts, and which facts must be pleaded and proved. How and why, i.e from which facts coercion and undue influence was exerted by the appellant/defendant/Bank on the respondents/plaintiffs is not mentioned in paras 8 and 9 of the plaint or in paras 8 and 9 of the affidavit by way of evidence. Therefore, the trial court rightly held that there was no undue influence and coercion in the respondents/plaintiffs giving the Letter dated 24.3.2004/Ex.DW1/2 to the appellant/Bank. I may note that the first appellate court has not at all touched this issue because it has gone on the

discussion that the Letter dated 24.3.2004/ Ex.DW1/2 is either illegal on account of lack of attestation or the same lacks credibility on account of reasons such as not mentioning of the property number or how the liability was to be divided amongst six companies mentioned in this Letter dated 24.3.2004. I must note that it is very curious and strange for the first appellate court to have held that the document in question being Letter/Ex.DW1/2 dated 24.3.2004 is bad on account of lack of attestation or not giving of property number or lack of factum of mentioning of bifurcation of liability amongst six companies in this letter, because, such aspects even remotely were not the case of the respondents/plaintiffs in its pleadings or evidence. I am indeed surprised and troubled as to how the first appellate court could have returned the findings and conclusions with respect to the lack of legal validity for discarding Ex.DW1/2. The letter Ex.DW1/2 by no stretch of imagination creates a mortgage because the same only talks of continuing of the equitable mortgage by deposit of title deeds. Ex.DW1/2 is not a mortgage deed. The letter Ex.DW1/2 is reproduced later and a reading of the same leaves no manner of doubt that it is not creating a mortgage as if it is a deed of mortgage and mortgage and the same is only a letter of equitable mortgage.

13. So far as the aspect of the document Ex.DW1/2 lacking credibility because it is only for 125 sq. yards and not for 1400 sq. yards which is a figure written in hand over a typed figure of 125 sq. yards the same is discussed below while discussing the second issue, however, it is quite clear that the findings of the first appellate court are most illegal and perverse to say the least, as discussed above.

14. The second issue is really, in fact, the main issue which was argued on behalf of the respondents/plaintiffs before this Court with some vehemence. It is argued that the area mortgaged to the appellant/defendant/Bank was 125 sq. yards and not 1400 sq. yards because not only is the figure of 1400 sq. yards written by overwriting in Ex.DW1/2 over the typed figure of 125 sq. yards, the fact that mortgage can only be of 125 sq. yards becomes clear because in the similar copy of the letter dated 24.3.2004 filed and proved by the respondents/plaintiffs as Ex.PW1/2 the figure is only of 125 sq. yards as originally typed and there is no change of this figure of 125 sq. yards to 1400 sq. yards. In fact, this Court, has in order to resolve the issue as to whether only 125 sq. yard was mortgaged or 1400 sq. yards was mortgaged, passed an Order on 13.1.2014 asking both parties to file valuation report supported by affidavits, and which the parties have done, however, since affidavits are at great variance, I find that this

Court cannot rely upon the affidavits of either of the parties. Whereas in the valuation report appellant/defendant/Bank suggests the value of the property at 8500 per sq. yards, in December, 2003 the respondents/plaintiffs state that in the same period the value of the suit property was around Rs.48,000/- sq. yards. Affidavit of valuation filed on behalf of the appellant/defendant/Bank is supported only by the valuation report of its Manager given at the time of continuing of the equitable mortgage without supporting documents, the valuation report of the respondents/plaintiffs is supported by the circle rates of the year 2007. The valuation report of the appellant/defendant/Bank is not supported by any sale deed or any other document to show the valuation and hence cannot be looked into, whereas, the valuation report given by the respondents/plaintiffs refers to valuation of around three years after the creation/extension of the mortgage by the Letter dated 24.3.2004. This Court is, therefore, only looking at the original evidence which is led by the parties before the trial court to decide the issue as to whether the mortgage is of 125 sq. yards of property or of 1400 sq. yards of property.

15. Let me at this stage reproduce the document Ex.DW1/2 and the same reads as under:-

“1. Sri Ashwani Kumar
S/o Sri Mohan Kumar
C385 Surya Nagar, Ghaziabad

2. Sri Deepak Anand
S/o late G.L. Anand
E-17 Sector-41, Noida and

3. Sri Rakesh Gulati
S/o Late K.L. Gulati
60 A, Pocket B, Hari Nagar, Delhi.

To
The Assistant General Manager
The Federal Bank Limited
New Delhi-110 019.

Dear Sir,

Reg: Release of The title deed/documents pertaining to the property situated at Chanderiwali, Main Loni Road, Kabook Nagar, Shadra, Delhi-110032 owned by us and mortgage to you

1400

We have mortgaged the property to the extent of ~~125~~ sq yds situated at Chanderiwali, Main Loni Road, Kabool Nagar, Shadra, Delhi-110032 for the credit limit sanctioned to M/S A B I Overseas Limited.

Though the liability of M/s ABI Overseas Limited is cleared, we will not request for release of the Documents and confirm continuance of charge over the property until and unless the liability of (a) M/s Secos India (P) Limited, (b) M/s Sikka Associates, (c) M/s Kumar Travels, (d) M/s Venus Events Management (P) Limited and (e) M/s Falcon Books (P) Limited to the extent of Rs.1,25,00,000/- (Rupees One crore Twenty Five Lakhs only) is made NIL.

Yours faithfully

1. Sri Ashwani Kumar
2. Sri Deepak Anand
3. Sri Rakesh Gulati

Place: New Delhi
Date:24.03.2004

For The Federal Bank Ltd.
-sd-”

16. In my opinion, the issue with respect to whether 125 sq. yards of the property was mortgaged or 1400 sq. yards of the property was mortgaged can be resolved by a very simple aspect in the facts of the present case, because, the mortgage which was earlier and originally created before 2004 of the property was of 1400 sq. yards by deposit of title deeds of a total of eight sale deeds by which the respondents/plaintiffs had purchased the property. Property is one but is purchased by eight Sale Deeds of different areas. These eight Sale Deeds are dated 1.11.2002, 22.4.2003, 17.7.2003, 17.7.2003, 25.11.2002, 13.12.2002, 9.12.2002 and 1.11.2002. These eight sale deeds are of areas respectively of 100 sq. yards, 310 sq. yards, 250 sq. yards, 240 sq. yards, 170 sq. yards, 75 sq. yards, 130 sq. yards and 125 sq. yards. Admittedly, equitable mortgage of this property was already created in favour of the appellant/defendant/Bank and by the Letter dated 24.3.2004/Ex.DW1/2 equitable mortgage was only extended. If equitable mortgage was intended to be extended for only 125 sq. yards of the property then there was no reason why all the eight sale deeds totaling to 1400 sq. yards remained with the appellant/defendant/Bank and why the respondents/plaintiffs did not ask for the return of the remaining seven sale deeds which would total to an area of 1275 sq. yards by leaving with the appellant/defendant/Bank one Sale Deed of 125 sq. yards dated 1.11.2002

executed between Smt. Kanta Kumari Arora as the seller and Deepak Anand i.e. plaintiff no. 2 as the buyer or for that matter any other one sale deed only. It is, therefore, clear that the respondents/plaintiffs had made a mistake in typing the figure of 125 sq. yards in the Letter dated 24.3.2004 and therefore the same was corrected by hand to 1400 sq. yards by the appellant/defendant/Bank. I am fortified in this conclusion because neither in the pleadings of the respondents/plaintiffs nor in their evidence the case of the respondents/plaintiffs is that the figure of 1400 sq. yards mentioned in Ex.DW1/2 has been illegally and without instructions got changed by the appellant/defendant/Bank by wrongly overwriting the figure of 1400 sq. yards by hand over the typed figure of 125 sq. yards.

17. In view of the facts of the present case that there were a total of eight sale deeds with respect to a total of 1400 sq. yards of the suit property, hence, it could not have been that if the mortgaged continued only for 125 sq. yards, then, why all the eight sale deeds continued to remain with the appellant/defendant/Bank and the remaining seven sale deeds were never sought by the respondent/plaintiff for being returned by the bank. The only stand of the respondents/plaintiffs was that the Letter dated 24.3.2004 was taken by coercion and undue influence and to this effect the respondents/plaintiffs wrote their Letter dated 15.6.2004/Ex.PW1/3 to the

appellant/defendant/Bank and which was clearly an afterthought. It is, therefore, held that the mortgage which was created was of the property of 1400 sq. yards by extending the mortgage with respect to the liabilities of the six companies stated in the Letter Ex.DW1/2 dated 24.3.2004 and that it cannot be held that the mortgage created by the respondents/plaintiffs in favour of the appellant/defendant/Bank was only for 125 sq. yards of the suit property. While on this aspect I may also state that the first appellate court has very perversely talked of the property details and number not being mentioned in Ex.DW1/2 whereas there is no dispute or any doubt between the parties as to identification of the mortgage property which is the subject matter of the present suit.

18. In view of the aforesaid discussion, it is clear that the first appellate court has most illegally and perversely set aside the judgment of the trial court, and that too against all canons of law and justice, with the aspect that a totally new case was made out by the first appellate court in favour of the respondents/plaintiffs and which was not even the case of the respondents/plaintiffs in its pleadings and evidence.

19. In view of the above discussion, this Regular Second Appeal is allowed by answering the substantial question of law in favour of the

appellant/defendant/Bank and against the respondents/plaintiffs and thereby the Judgment of the First Appellate Court dated 1.3.2013 is set aside and the Judgment of the Trial Court dated 1.11.2012 is sustained whereby the suit of the respondents/plaintiffs will stand dismissed. Parties are left to bear their own costs.

NOVEMBER 03, 2016

VALMIKI J. MEHTA, J

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