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

\+ CM(M) 362/2017

JITENDER JUNEJA ..... Petitioner

Through: Mr.Masood Hussain, Advocate.

versus

BABLI RANI ..... Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% **02.05.2017**

CM No.12747/2017

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

CM(M) 362/2017

1. This petition under Article 227 of the Constitution of India has been filed by the petitioner who is defendant in Civil Suit No.609593/16 titled as *Babli vs. Jitender Juneja* assailing the order dated 8th March, 2017 whereby the learned Civil Judge dismissed the application filed by the petitioner/defendant under Section 151 CPC for considering the Mortgage Deed for collateral purpose.

2. Learned counsel for the petitioner has submitted that the purpose of filing of the Mortgage Deed is not to claim any right or title in respect of the suit property but only to show that in what capacity the petitioner herein is in possession in respect of the suit property.

3. Mr.Masood Hussain, Advocate appearing on behalf of the petitioner submitted that despite the Mortgage Deed not being sufficiently stamped and un-registered, it can be admitted in evidence for collateral purpose so as to know the nature and character of the party to the document. Learned counsel for the petitioner has relied upon the decision of the Madhya Pradesh High Court in *Badrilal & Ors. vs. Manibai & Ors.* AIR 2006 Madhya Pradesh 117 and decision of Andhra Pradesh High Court in *Gedela Lalitha Kumari vs. Bonumahanthi Neelakantham* 2003 Law Suit (AP) 1259.

4. I have considered the submissions made by learned counsel for the petitioner as well the case law cited by him in support of his contentions.

5. In the decision reported as "*Badrilal & Ors. vs. Manibai & Ors.",* AIR 2006 Madhya Pradesh 117, in paragraph 6 the legal position has been explained and the petition was dismissed observing as under:-

> *"6. Section 17 of the India Registration Act refers to the documents that are required to be registered. Section 49 ibid provides for the consequences of non registration of such of documents which require registration. One of the consequences is that such unregistered document cannot be received as evidence of terms of any transaction affecting immovable property comprised therein. The exception to this general rule is that such an unregistered document, though inadmissible as evidence of transaction affecting immovable property, can be admitted for limited collateral purposes such as to know the nature and character of possession of party to the document. Petitioners have failed to show any collateral purpose qua the alleged unregistered partition deed dated 20-5-1992 so as to bring it within the exception to the general rule. In view of this no illegality or jurisdictional error could be attributed to the order impugned."*
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> *"7. The upshot of the foregoing discussion and the inevitable result is that this petition must fail and accordingly it is hereby dismissed. However, looking to the facts and circumstances of the case, there shall be no orders as. to costs of this petition."*

6. In fact in the case relied upon by learned counsel for the petitioner the prayer of the petitioner for taking on record the un-registered partnership deed was rejected by the learned Civil Judge. The petition filed under Article 227 of the Constitution of India to assail the validity of the interlocutory order has also been dismissed by the High Court observing that petitioner failed to show any collateral purpose qua the alleged unregistered partnership deed.

7. Another decision relied upon by the learned counsel for the petitioner is reported as *Gedela Lalitha Kumari vs. Bonumahanthi Neelakantham* 2003 Law Suit (AP) 1259. The petitioner cannot derive any assistance from this report for the reason that in the above noted case, the plaint was returned requiring the plaintiff to pay stamp duty and the penalty on the document i.e. simple mortgage deed on the basis of which the suit was filed as the mortgage deed was insufficiently stamped and unregistered. The limited relief granted in the revisional jurisdiction was that the document will be treated as a transaction of personal liability. In para nos.8 and 9 of the Gedela Lalitha Kumari's case (supra), it was observed as under:-

> *8. In the light of the contents of the document and the legal position, the lower Court can receive the document for a limited purpose of enabling the plaintiff to recover the amount on personal liability of the respondents.*
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> *9. In the light of the above discussion, the revision petition is allowed. The revision petitioner is directed to re-present the plaint with a copy of this Order and on presentation of the said plaint, the lower Court s hall receive the plaint aong with the suit document and number the suit only for the limited purpose of recovery of money of Rs.10,000/- with interest by treating it as a transaction of personal liability. No order as to costs.*

8. It is relevant to mention here that the petitioner herein has already

filed a suit bearing Civil Suit No.611572/2016, titled as *Jitender Juneja & Ors. vs. Satish Kumar & Ors.* for recovery of Rs.12 lac along with the interest thereon. In the said suit, on the basis of the order dated 8th September, 2015 an application was also filed before the learned ADJ that the mortgage deed being unregistered and insufficiently stamped, in view of the order dated 8th September, 2015, the suit filed by the plaintiff Jitender Juneja is not maintainable. The learned ADJ settled the preliminary issue filed in the suit wherein the prayer for dismissing the suit as being not maintainable has been declined. The learned ADJ observed that rejection of the Mortgage Deed does not make suit of the plaintiff liable to be dismissed.

9. The petitioner herein earlier filed CM(M) 1099/2015 which was dismissed as withdrawn with liberty to the petitioner to move appropriate application to file appropriate application before the learned Trial Court in respect of the inadmissibility of the Mortgage Deed which was not properly stamped. The document being insufficiently stamped, it can be impounded and after paying the deficiency in stamp duty and the penalty, it can be tendered in evidence. But here the issue is not only of insufficiency in paying the stamp duty but also that the document is un-registered document though it required compulsory registration. As the matter is still pending trial, whether the document i.e. Mortgage Deed can be considered by the learned Trial Court for collateral purpose needs to be argued before and dealt with by the learned Trial Court.

10. Whether the insufficiently stamped and unregistered mortgage deed has been tendered in evidence or whether it can be admitted in evidence for limited purpose i.e. collateral purpose has to be ascertained by the learned Trial Court.

11. In exercise of power vested under Article 227 of the Constitution of India, no direction can be issued by this Court to the learned Trial Court to consider the document for collateral purpose.

12. The petition is hereby dismissed.

PRATIBHA RANI, J.

MAY 02, 2017

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