

\$~41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 878/2018 & CM APPL. 30895-30896/2018
SUNITA RANI CHAUHAN Petitioner
Through: Mr. Neeraj Sharma, Adv.

versus

RAGHU NANDAN Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **03.08.2018**

CM APPL. 30895/2018 (Exemption

This is an application filed on behalf of the petitioner seeking exemption from filing DIM copies of annexures. Exemption allowed, subject to just exceptions.

CM APPL. 30896/2018 (Exemption

This is an application filed on behalf of the petitioner seeking exemption from filing English translation of the annexures. Exemption allowed, subject to just exceptions.

CM(M) 878/2018

Submissions have been made on behalf of the petitioner.

The petitioner assails the impugned order dated 28.05.2018 of the ADJ-02 (North-West), Rohini in Case No.76492/16 whereby an application under Order 7 Rule 11 of the CPC filed on behalf of the petitioner herein i.e. the defendant arrayed to the said suit was declined, it having been observed to the effect:

“The Counsel for defendant is not available. Be that as it may, I have gone through the contents of the application under Order 7 Rule 11 CPC. It is stated therein that the present suit for declaration and other reliefs is not maintainable because the defendant is having the entire chain of the sale documents executed by the plaintiff in his possession whereby the plaintiff was left with no right.

These contentions are a matter of trial. Whether the case of the plaintiff is right or the defence of the defendant is maintainable these are the things which can only be adjudicated after appreciation of evidence and not at this stage. At the stage of the aforesaid application, the contents of the plaint are to be taken as correct and going by that analogy, it cannot be said that the plea raised by the defendant regarding the correctness of his documents is to be taken as the truth.

Accordingly, the application under Order 7 Rule 11 of the CPC is dismissed.

To come up for admission/denial and framing of issues on 27.08.2018.”

A bare perusal of the plaint placed on record as filed by the respondent indicates that this is a suit for possession, declaration, damages/mesne profits with consequential relief or permanent injunction sought *inter alia* submitting to the effect that the plaintiff i.e. the respondent herein on 13.10.2007 had taken a loan of Rs.60,000/- from one Smt. Shanti, r/o Balbir Vihar, Delhi and that in consideration of the same, the plaintiff had also executed a mortgage deed duly in favour of the said Smt. Shanti and ultimately returned back the said amount within the time agreed between the plaintiff i.e. the respondent herein and the said Smt. Shanti. *Inter alia* it has been submitted through the plaint that in the month of

March, 2011 daughter of law of the plaintiff i.e. the respondent herein had expired, a case was registered against the plaintiff, his wife and his son, as a consequence of which, they all had been taken into custody by the police and in order to contest the case and in order to seek bail, loan had to be taken by the plaintiff and that Smt. Shanti who had earlier given a loan of Rs.60,000/- to the plaintiff, had introduced the plaintiff i.e. the respondent herein to the defendant to the said suit i.e. the petitioner herein and after negotiation, the defendant to the said suit i.e. the petitioner herein had rightly agreed to advance a loan of Rs.2,10,000/- to the plaintiff for a period of 11 months commencing w.e.f.11.05.2011 on interest @ 3% per month payable by cash on the 10th day of each English calendar month and that the defendant i.e. the present petitioner got executed a mortgage deed from the plaintiff in respect of his property bearing No.65/4, Kailash Vihar, Delhi-110086 and that the plaintiff i.e. the respondent in the present petition claimed to be the sole, exclusive and absolute owner and submitted further to the effect that in terms of the mortgage deed dated 11.05.2011, it had been agreed therein that in the event of the plaintiff i.e. the respondent in the present petition failing to pay the said loan to the defendant within the stipulated period of 11 months, the defendant i.e. the present petitioner would be entitled to sell, dispose off, transfer the documents of the property in any manner as the defendant liked in order to recover the loan amount and the plaintiff i.e. the respondent herein would raise no objection for the same. It has been further submitted through the plaint by the plaintiff to the said suit i.e. the respondent herein that the plaintiff along with his wife and his son having been taken into custody, continued to remain in custody till

20.02.2013 on which date, they were acquitted in the said case and that during the course of the said period when the plaintiff, his wife and his son continued to remain in custody, interest was being paid to the defendant to the said i.e. the present petitioner in time and it had been agreed between the plaintiff i.e. the respondent herein and the defendant i.e. the present petitioner, that after coming from jail, the plaintiff would make arrangement for the repayment of the said loan to the defendant and after coming from jail, the plaintiff made arrangement of the amount for the repayment of the said loan amount to the defendant and with great difficulty arranged the sum of Rs.1 lakh which amount was repaid on 10.03.2013 to the defendant i.e. the present petitioner and that the plaintiff sought time for repayment of the balance loan amount of Rs.1,10,000/- along with interest but on 20.03.2013, the defendant i.e. the petitioner herein along with some antisocial elements of the area reached the premises of the plaintiff i.e. the respondent herein and started quarrelling with the plaintiff and his other family members for the repayment of the loan amount and under compulsion, had obtained the signatures of the plaintiff i.e. the respondent herein on a blank paper and after obtaining the same, dispossessed the plaintiff and his other family members from the property by throwing their goods and articles from the property and by putting her locks thereupon.

The plaint further alleges that the defendant and her associates i.e. the present petitioner had shown certain forged and fabricated documents thereby showing that the plaintiff i.e. the respondent herein had sold/transferred the suit property in favour of the defendant whereas in reality, the plaintiff had never sold or transferred the suit

property in favour of the defendant at any point of time.

The contentions raised on behalf of the defendant i.e. the present petitioner are to the effect that the petitioner herein has a chain of documents executed by the plaintiff i.e. the present respondent indicating that the plaintiff i.e. the respondent to the present petition is not left with any right to the property in question. As rightly observed by the learned trial Court, the said submissions are a matter of trial. The averments made in the plaint are what have to be considered at the stage of consideration of the applicability under Order 7 Rule 11 of the Code of the Criminal Procedure, 1973 which has been so appropriately considered by the learned trial Court.

The petition is devoid of all merits and is thus declined.

Nothing stated hereinabove shall however amount to an expression on the merits of the case.

Copy of the this order be sent to the learned trial Court.

ANU MALHOTRA, J

AUGUST 03, 2018

vm