NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No.11 of 2005

- Hem Datta Kesharwani, S/o. Shobha Ram Kesharwani, aged 38 years, R/o. Mission School, School Road Champa Distt. Janjgir-Champa (Chhattisgarh)

Appellant

Versus

Life Insurance Corporation of India, Through Manager (Legal & SVP) Divisional Office, Pandari, Raipur (Chhattisgarh)

---- Respondent

For the appellant : Shri Rajeev Shrivastava, Advocate
For the respondent : Shri Mukesh Sharma, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

31.01.2019.

1. This appeal is preferred against judgment and decree dated 29.11.2004 passed by Third Additional District Judge (FTC), Janjgir in Civil Suit No.9B/2004 wherein the said Court decreed the suit filed by the respondent for recovery of principle amount of Rs.87,000/-, interest thereof Rs.1,97,468/- and legal expenses of Rs.180/-.

2. Respondent is Life Insurance Corporation of India constituted under the provisions of Life Insurance Corporation Act, 1956. The respondent is operating a scheme for providing loan for the benefit of general public in order to avail of the said scheme of “Own a House”. On 28.10.1992, the respondent cleared application of the appellant on the condition that loan was to be repaid in the form of half yearly installment with interest @ 16% calculated half yearly. An amount of Rs.90,000/- was sanctioned to the appellant as loan and the appellant executed promissory note in favour of the respondent on 23.3.1993 and executed mortgage deed of loan bearing survey No.1688/15, plot No.58 Patwari Halka No.2 having an area of 0.10 acre situated at Champa on 16.12.1992 in favour of the respondent/plaintiff. As the appellant violated the terms and conditions of the scheme, defaulted in payment of installment, total amount outstanding as above is claimed by the respondent and a suit was instituted. After hearing both the sides, the trial Court passed the decree as mentioned above.

3. Learned counsel for the appellant submits that the appellant was under impression that the loan was advanced for the scheme of Own a House, but it is made mortgage loan that is why rate of interest is increased to 16% while in Own a House scheme it is 14% interest. This point is admitted by Abdul Hafiz Ansari who is AW-1.

4. Per Contra, learned counsel for the respondent submits that finding of the trial Court regarding mortgage (issue No.6) is not in the fitness of the law of land because as per Notification No.F. 7(A) 1-91-XXI-B(Two), dated 12.4.1991 published in MP Gaz. Pt.I. Dated 3.5.91, 9.503].- in exercise of the powers conferred by clause (f) of Section 58 of the Transfer of Property Act, 1882 (no.4 of 1882), the State Government specifies all the Tahsils and Blocks Headquarters as Towns in the State for the purpose of the said clause, therefore, no registration was required for the mortgage in question but the trial Court overlooked the factual and legal aspects of the matter and therefore, the finding regarding mortgage is liable to be reversed.

5. From the evidence of Abdul Hafiz Ansari (AW-1) who is the officer of the respondent it is clear that the appellant borrowed a sum of Rs.90,000/- @ 16% calculated half yearly and due to his default, the total amount of Rs.2,84,648/- is outstanding. Version of this witness is supported by the documents Ex-P/1 to P/14 which is unrebutted. The appellant has admitted his signature in the documents produced before the trial Court and he has also admitted his signature in the said document while deposing as DW-1 before the trial Court. From the evidence it is not established that the amount has been taken for some different scheme in which interest was less than 16%, therefore, argument advanced on behalf of the appellant was without substance.

6. The trial Court while deciding issue No.6 has overlooked the notification issued by the State Government by which the registration of the mortgage is exempted for mortgage created under Section 58F of the Transfer of Property Act, 1882 while granting loan, therefore, finding that mortgage in the present case ought to have been registered is contrary to the notification issued for the said purpose.

7. Accordingly, the finding of the trial court is reversed and it is declared that the land bearing Survey No.1688/15, plot No.58 Patwari Halka No.2 having an area of 0.10 acre situated at Champa which is owned by the appellant is mortgaged for the loan in question and the said property is liable to be recovered towards the said loan.

8. The other part of the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking the jurisdiction of the appeal. Accordingly, the appeal is liable to be dismissed and the decree is passed in favour of the respondent and against the appellant as under:

(1) The appeal is dismissed with cost.

(2) The appellant to bear the cost of litigation throughout.

(3) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.

(4) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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