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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No.126 of 2007

Reserved on 24.06.2020
Pronounced on 02.07.2020

Life Insurance Corporation of India, through Manager (L & HPF), Divisional Office, "Jeevan Prakash", Jeevan Beema Marg, Pandari, Raipur (CG) **---- Appellant/Plaintiff**

Versus

1. Manoj Kumar Jain, aged about 61 years, S/o Sri Dammumal Jain,
2. Sri Ashok Kumar Jain, aged about 56 years, S/o Sri Dammumal Jain,
3. Joint Hindu Family, Through : Karta Manoj Kumar Jain, S/o Sri Dammumal Jain,

All R/o Behind Hotel Mahindra, Kutchary Chwok, Jail Road, Raipur (C.G.) **---- Respondents/Defendants**

For Appellant	:	Shri Mukesh Sharma, Advocate.
For Respondents	:	None appears.

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V. Judgment/Order

1. This Appeal has been preferred by the Plaintiff – Life Insurance Corporation of India (hereinafter referred to as the Corporation) under Section 96 of the Code of Civil Procedure, 1908 (for short 'CPC'), questioning the legality and propriety of the judgment and decree dated 30.04.2007 passed by the 9th Additional District Judge (FTC), Raipur in Civil Suit No.19-A/2006, whereby the claim has been dismissed holding it to be barred by time. The parties to this appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that Defendants have approached the Corporation for the loan amount of Rs.1,00,000/- (Rupees one lakh only) for development of the business with

regard to their firm known as M/s. Paras Film Exchange. After considering the same, it was sanctioned by the Corporation under certain terms and conditions, as stipulated in the loan offer letter, dated 14.12.1988 and, a deed of equitable mortgage of immovable property was executed by the Defendants for the security of the said loan amount. According to the plaintiff, the Defendants have committed defaults in paying the said loan amount and have failed to deposit the same despite issuance of demand notice, therefore, the Plaintiff – Corporation has been constrained to file the suit in the instant nature for the recovery of sum of Rs.1,55,762.80/- along with interest.

3. While contesting the aforesaid claim, it was pleaded by the Defendants that since the suit for recovery of the said loan amount has been filed beyond the period of three years from the date of alleged default committed by them for the first time, therefore, it deserves to be dismissed on the point of limitation.

4. After considering the evidence led by the parties, it has been held by the trial Court that since the property in question mortgaged by the Defendants is the government nazul land, therefore, the claim as made, is not maintainable. It held further that in absence of stamp duty, the “deed of ikrarnama” (Ex.P.29) and the “memorandum of deposit of title deeds” (Ex.P.30) cannot be held to be admissible in evidence and observed further that since the suit for recovery of loan amount has been made beyond the period of three years when the first default for its payment was committed by the defendants on 28.12.1988, is,

therefore, barred by time. In consequence, the claim was dismissed, which has been impugned by way of this appeal.

5. Shri Mukesh Sharma, learned counsel appearing for the Corporation, submits that the finding of the trial Court holding the claim to be barred by time is apparently contrary to law. It, however, ought to have seen that since the alleged loan amount was sanctioned subject to creation of equitable mortgage of immovable property owned by Hindu Undivided Family, therefore, it would be governed by Article 62 of the Indian Limitation Act, 1963 (hereinafter referred to as the Act of 1963), and as such, the claim cannot be held to be barred by time. Further contention of Shri Sharma is that the trial Court, before holding the said documentary evidence, marked as Ex.P.29 and Ex.P.30, as inadmissible in evidence being unstamped, ought to have exercised its powers as provided under Sections 33 and 35 of the Indian Stamp Act, 1899 (hereinafter referred to as the Act of 1899). Having failed to do so, the trial Court has committed a serious illegality in dismissing the claim.

6. No one appears on behalf of the Defendants/Respondents despite service of notice of this appeal.

7. I have heard learned counsel for the Appellant and perused the entire record carefully.

8. Undisputedly, a loan amount of Rs.1,00,000/- (Rupees one lakh only) was sanctioned to the Defendants under M-1 Scheme for development of business of their firm known as M/s. Paras Film

Exchange. It appears that for security of the said loan amount, the Defendants through their 'Karta' Manoj Kumar, have mortgaged their undivided property situated at Plot No.2/11, Block No.95, Moudahapara, Raipur, as evidenced by para 21 of the document styled as “Application For Loan On Mortgage of Property” (Ex.P.2). The said property, mortgaged as such, was, therefore, admittedly belonging to their undivided family and, in fact it was not in dispute that it did not belong to them. What is pleaded by the Defendants in their written statement in this regard is that the signature of said Manoj Kumar has been obtained in blank papers before sanctioning the alleged loan amount by the Corporation. Meaning thereby, the nature of the said property was not in issue, yet the trial Court has held that it is a government nazul land and cannot be mortgaged as such by the defendants. The said finding is, therefore, liable to be and is hereby set aside.

9. It is true that the alleged documentary evidence, i.e., “deed of ikrarnama” and “memorandum of deposit of title deeds,” marked respectively as Ex.P.29 and Ex.P.30, are executed in absence of the stamp duty. The Defendants have, therefore, raised an objection regarding its admissibility at the stage of evidence. However, the trial Court, while taking note of those objections, observed that the same be decided at the time of final hearing and, ultimately those documentary evidence were held to be inadmissible in evidence. The approach of the trial Court keeping the said objection in abeyance regarding the admissibility of those documentary evidence instead of deciding the same at

that particular stage itself is, therefore, unacceptable and not sustainable in the eye of law. It is settled principles of law that where a question as to admissibility of any document is raised on the ground that it has not been stamped, or has not been properly stamped, then it has to be decided immediately when the document is tendered in evidence, as held by the Supreme Court in the matter of ***Bipin Shantilal Panchal*** vs. ***State of Gujarat and another*** reported in **(2001) 3 SCC 1** wherein it has been held in paragraph 14 as under:

> "**14.** When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)"

10. That apart, before holding the same to be inadmissible in evidence, the trial Court should have resorted to the provisions prescribed mandatorily under Sections 33 and 35 of the Act of 1899 as it would show from a bare perusal of these provisions that if an unstamped instrument, which ought to have been duly stamped under the provisions of the Act, comes before Court, the Court shall impound the same and levy the stamp duty together with its penalty and the document could then be

admitted in evidence.

11. Here in the instant matter, as found herein above, both the said instruments (Ex.P.29 and Ex.P.30), which are not duly stamped, as required under the law, could have not only been impounded by the Court, but could also have been admitted in evidence thereafter upon fulfilling the requirement of law in exercise of the powers enumerated under the aforesaid provisions.

12. Having failed to exercise the same even at the time of evidence when an objection was raised in this regard, the trial Court has committed a serious illegality in holding that both the documents are inadmissible in evidence. The said finding is also liable to be and is hereby set aside.

13. Since it appears, as observed herein above, that a deed of mortgage of alleged immovable property was executed by the Defendants by depositing their title deeds for the security of the alleged loan amount, and therefore, the claim would be governed by Article 62 of the Act of 1963, which provides a period of limitation of 12 years in filing such a suit. The loan amount as sanctioned by the Corporation was secured by virtue of creation of the said mortgage upon the immovable property, the claim as made, cannot be held to be barred by time.

14. Consequently, the appeal is allowed and the impugned judgment and decree dated 30.04.2007 passed by the 9^{th} Additional District Judge (FTC), Raipur in Civil Suit No.19-A/2006 is hereby set aside and the matter is accordingly remitted back to the

Court of 9th Additional District Judge (FTC), Raipur/concerned Court with a direction to decide the same afresh by following the mandatory provisions prescribed under Sections 33 and 35 of the Act of 1899 in accordance with law. The Appellant/Corporation is directed to remain present before the said Court on 29.07.2020 and the trial Court shall issue a fresh notice to the Defendants and decide the matter after giving sufficient and reasonable opportunity of hearing to them.

15. Registry is directed to transmit the entire record forthwith to the concerned Court.

16. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge

Anjani