Ramesh Chander Chhaparia Vs. the Collector Bhatinda and ors.

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Court : Punjab and Haryana

Decided On : Jan-08-2003

Reported in : [2004]121CompCas196(P& H); (2003)134PLR137

Judge : N.K. Sud, J.

Acts : Indian Registration Act, 1908 - Sections 17

Appeal No. : Civil Writ Petition No. 4481 of 1984

Appellant : Ramesh Chander Chhaparia

Respondent : The Collector Bhatinda and ors.

Advocate for Def. : Rajiv Sharma, Adv.

Advocate for Pet/Ap. : T.R. Arora, Adv.

Disposition : Petition allowed

Judgement :

N.K. Sud, J.

1. This writ petition is directed against the order of the Sub Registrar dated 18.6.1984 requiring the petitioner to make up the deficiency in stamp duty amounting to Rs.990/-. The petitioner had raised a loan from the Punjab Financial Corporation. For this purpose, mortgage deed dated 6.5.1982 (annexure P-1) had

been executed. Clause-(l) of this deed had prescribed the period for repayment of loan. This clause also contained the following proviso:-

'Provided that notwithstanding anything continued hereinabove the mortgagorsagree that if the Industrial Development Bank of India refinances the amount ofpresent loan to the Corporation then the period of repayment shall be readjusted by theCorporation in accordance with the repayment period of said refinance as may befixed by the Industrial Development Bank of India.'

2. It is not disputed that this deed had been duly registered and stamp duty paid. Thereafter the Industrial Development Bank of India refinanced the loan and reduced the period during which the repayment of loan had to be made. In view of the aforesaid proviso of Clause (1), a supplementary agreement dated 18.11.1982 was executed tobring the period of repayment of loan in conformity with the period of repayment as prescribed by the Industrial Development Bank of India. The Sub Registrar was of the view that the second agreement also required registration under Section 17 of the Indian Registration Act. 1908 being a new mortgage deed. Accordingly vide his notice dated 18.6.1984, he required the petitioner to deposit an additional sum of Rs.990/-.

3. Mr. Arora appearing on behalf of the petitioner contends that the agreement dated 18.11.1982 was not a fresh mortgage deed, but was merely a supplementary deed and as such did not require any registration. He further contends that the proviso of Clause (1) itself envisaged readjustment of the period of repayment of loan to bring it in conformity with the period prescribed by the Industrial Development. Thus the agreement dated 18.11.1982 dovetailed into the mortgage deed dated 6.5.1982. For this purpose, he has placed reliance on the decision of the Andhra Pradesh High Court in Intraven Pharmaceuticals Pvt. Ltd. Hyderabad and Ors. v. The Andhra Pradesh Small Scale Industries Development Corporation Ltd. Hyderabad, A.I.R. 1984 A.P. 36. In that case, the original mortgage deed was amended to change the rate of interest. Such an amendment had duly been postulated in the original deed itself. In such circumstances, it was held that where the original registered mortgage deed itself implicitly postulated the amendment and the mortgage was empowered to change the terms and

conditions that may be brought from time to time in the booklet of the terms and conditions for finance issued by the financier, the enhancement in the rate of interest was assimilated in the document itself as the mortgage deed contemplated taking in amendments and increase in the rate of interest was dovetailed into the mortgage deed. It was, therefore, held that in this view, the question of registration with regard to variation of rate of interest does not arise as the mortgage deed was a registered document and the enhancement of the rate of interest was a component of the mortgage deed.

4. Counsel for the respondents, on the other hand, refers to sub para (a) of para 159 of the Punjab Registration Manual 1929 to contend that the agreement dated 18.11.1987 was a fresh mortgage deed being a supplementary document.

5. After hearing Counsel for the parties and after perusing the authority cited before me, I am satisfied that the petition deserves to succeed. The facts of the present case are on all fours with the facts in M/s Intraven Pharmaceuticals's case (supra). In the present case, the original mortgage deed itself envisaged change in the period of repayment of loan on the basis of period prescribed by the Industrial Development Bank of India on refinancing. Thus the change in the period made by the supplementary deed dated 18.11.1982 was a component of the original mortgage deed itself and did not give rise to fresh mortgage deed. The provision contained in sub para (a) of para 159 of the Punjab Registration Manual, 1929 relied upon by the Counsel for the respondents has no application to the facts of the present case. This para reads as under:-

'159 Registration of a document may take place registration for error in thefollowing three cases of description:

(a) the first is where a deed is altered after registration by consent of parties, to correct an error of description and in furtherance of their original intention. Such alteration, in effect, makes the document a new one, different from the one already registered; and if it is a document covered by Section 17 of the Act re-registration becomes obligatory. Another mode of correcting such a misdescription is to draw up a supplementary document, reciting the error in the former one and the correction now intended to be made, and to register this document also, such supplementary document will however have to be treated in every respect in the same way as the original, and will be liable to the same fees. Moreover, it should be properly stamped, and unless Section 4 of the Indian Stamp act, 1899 operates to reduce the stamp duty, it will generally be found preferable to draw up an entirely new instrument and have it registered.'

6. A bare perusal of the above provision shows that it deals with a case of alterationof a deed after registration to correct an error or description. This is not the position in the case in hand. The amendment has been made in the period of repayment of loan as contemplated in the proviso to Clause (1) of the original mortgage deed itself.

7. In view of the foregoing discussion, the writ petition is allowed. Notice (AnnexureP-4) dated 8.6.1984 is quashed. However in the circumstances of the case, there shall beno order as to costs.