

Amit Gupta v. Punjab National Bank
Civil Suit-471/2021

01.03.2023

Present: Sh. Bharat Gupta, Advocate for the plaintiff.
Sh. Mahesh K. Chaudhary, Advocate for the defendant.

ORDER ON THE APPLICATION UNDER ORDER XII RULE 6 CPC

1. This order shall decide an application under **Order XII Rule 6** of the Code of Civil Procedure, 1908 moved on behalf of the applicant/plaintiff seeking Judgment on admission made by the defendant-bank along-with an affidavit.

BRIEF FACTS:

2. Briefly stated, the instant suit was filed by the applicant/plaintiff on 20.11.2021 stating that he had taken two housing loans from the erstwhile Oriental Bank of Commerce, which later got merged with the defendant bank, who took over its assets and liabilities: that first loan was taken sometimes in July-2007 for a sum of Rs. 15,94,000/- and in order to secure the said loan an equitable mortgage of his property viz. **First Floor and Second Floor with roof rights bearing No. F-28, Naraina Vihar, New Delhi-110028** was created whereby the bank took **original sale deed dated 05.07.2007** of the applicant/plaintiff with respect to said property in its custody. The applicant/plaintiff stated that he availed second housing loan sometimes in May-2011 for a sum of Rs.18,50,000/- and in order to secure the said loan, an equitable mortgage of his property viz. **basement and ground floor of property bearing No. F-28, Naraina Vihar, New Delhi-**

110028 was created and **original sale deed dated 04.05.2011 registered on 16.05.2011** with respect to said property was also taken into custody by the defendant-bank. It was further stated by the applicant/plaintiff that sometimes in June-2016 he availed Over Draft Loan facility with the account N. 02225085001873 for a sum of Rs. 20,00,000/- against mortgage of the **First & Second Floor** along-with roof rights in the same property, the original sale deed dated 05.07.2007 of which was already with the defendant-bank.

3. To cut the long story short, there is no dispute that loan account has always been regular and the defendant-bank in its written statement has not brought out any delay, default or blemish on the party of the applicant/plaintiff in repayment of the aforesaid three loans. The dispute arose when the Over Draft loan facility/limit was reduced to Rs. 13 Lacs and the applicant/plaintiff submitted loan application dated 10.11.2020 with the defendant-bank to enhance the limit to Rs. 25 Lacs and this resulted in spate of correspondence between the two parties; the defendant-bank called upon the applicant-plaintiff to get the property papers de-laminated and submit file afresh for a loan; and that the applicant-plaintiff brought to the notice of the officials of the defendant-bank that original sale deed dated 05.07.2007 could not be de-laminated since there was possibility of original papers/title deed getting torn / damages in the process and instead called upon the defendant-bank to consider his application for enhancement of the over draft limit based on the **original sale deed dated 04.05.2011 registered on 16.05.2011** with respect to basement and ground floor of the same property already in their custody.

4. The applicant-plaintiff then claimed that the defendant-bank started harassing him so much so that two installments towards housing loan were belatedly credited/adjusted in the loan account duly paid for the month of February-2021 in March-2021 and they started claiming higher rate of interest @ 7.60% per annum against contractual rate of interest @ 7.15 % per annum. It appears that the matter was taken to the Banking Ombudsman but the impasse or dead-line continued and ultimately the defendant-bank in its letter dated 08.07.2021 acknowledged the custody of the certified copy of the sale deed bearing registration No. 4582 dated 16.05.2011, upon which the applicant-plaintiff objected that he had handed over original sale deed to the Bank and why the said document was being mentioned as certified copy of sale deed instead of original sale deed.

5. The grievance of the applicant-plaintiff is that despite considerable time and efforts, no satisfactory response was received from the defendant-bank and ultimately he concluded that the defendant-bank had **either lost or misplaced the original sale deed** dated 04.05.2011 registered on 16.05.2011 in respect of basement and ground floor of property No. B-28, Naraina Vihar, New Delhi-110028, and therefore, he sent a legal notice dated 17.08.2021 to the defendant-bank by all possible modes, which the defendant-bank responded after about a month vide reply dated 23.09.2021, making certain false imputations against the applicant-plaintiff, which were totally uncalled for and *inter alia* with regard to original sale deed dated 04.05.2011 registered on 16.05.2011 it raised an assertion that the loan document and title documents had been taken out and perused several times in the presence of the applicant-plaintiff; and that it was brought to his notice

that same were not in proper folder; and that since the sale deed had been executed in his favour by his mother, the applicant-plaintiff should get another sale deed executed in and submit the original afresh.

6. Suffice to state that series of allegations and counter-allegations continued to be levelled between the parties and it was the case of the applicant-plaintiff that although it was apparent that the original sale deed dated 04.05.2011 registered on 16.05.2011 has been misplaced due to sheer negligence of the officials of the defendant-bank, which fact was never notified to him, the defendant-bank also failed to enhance the overdraft facility to Rs. 25 Lacs based on the strength of the original sale deed dated 05.07.2007 in respect of first floor and second floor of the same property in a *malafide* manner. Hence, the present suit was filed seeking various kinds of declarations and mandatory injunction besides seeking damages to the tune of ***Rs. 50 Lacs from the defendant-bank towards compensation for loss or depressed of the market value of the property*** due to loss of original sale deed **plus Rs. 10 Lacs towards torture and harassment** and in total a sum of Rs. 60 Lacs has been claimed with *pendente-lite* and future interest @ 24% per annum.

7. Shorn off all details, the defendant-bank has filed a detailed written statement and *inter alia* it has been conceded that original sale deed dated 04.05.2011 registered on 16.05.2011 in respect of basement and ground floor of B-28, Naraina Vihar, New Delhi-110028 was some how misplaced *albeit* for some inexplicable administrative reasons; and that the defendant-bank in its written statement admitted advancing two housing loans and creation of overdraft facility also acknowledging that the applicant-plaintiff

made a request for enhancement of the overdraft loan facility from Rs. 20 Lacs to Rs. 25 Lacs; and that no dispute is raised that the applicant-plaintiff has been making payment of monthly installments in a regular and disciplined manner, and reference was made to reply by the bank dated 22.09.2021 in which it was stated as under:

“Since the above laminated Title Deeds were not accepted by the Bank, as such your client had offered to extend the charge over the Basement and Ground Floor of the above Property for availing the enhanced Overdraft Facility, however, it was found that the documents in respect of Basement and Ground Floor of the above Property were not in its proper folder and this fact was brought to the Notice of your client. *It appears that the Title Documents in respect of Basement and Ground Floor of Property bearing No. F-28, Naraiana Vihar, New Delhi, have been tagged in some other file.* Even after the receipt of your Legal Notice, the bank has made various efforts to locate the Title deeds. Rest assured, the documents have not been lost and would be found. Proper intimation of the same would be given to your client.”

8. Suffice to state that it has been claimed by the defendant bank that the suit is without any cause of action and liability for mental torture or harassment has been denied as also for claim of damages.

APPLICATION UNDER ORDER XII RULE 6 CPC:

9. The applicant-plaintiff in the instant application under Order XII Rule 6 of the CPC has referred to the various prayers, which have been made by him for relief in the present matter and based on the defence put forth by the defendant-bank whereby *inter alia* it has been acknowledged that the original sale deed dated 04.05.2011 registered on 16.05.2011 has been misplaced at its end, the applicant/plaintiff has claimed that there should be no legal hindrance in passing a decree in favour of the applicant-plaintiff with regard to reliefs, which are clause (a), (f), (g), (j) to (p) in the suit.

10. Reply has been filed by the defendant-bank and denying the reliefs claimed under Order XII Rule 6 CPC to pass whole of the decrees as claimed in the suit, it is stated that although the document in question is not traceable at its end but it does not mean that it has been lost and no negligence or deficient services on the part of the defendant-bank can be attributed; and that the defendant-bank has made no admission with regard to imposing of higher rate of interest on the loan mentioned by the applicant-bank and the present suit of the applicant-plaintiff is not only frivolous in the nature of arm twisting measures to take undue advantage of the whole unsavoury situation emanating from loss of the original sale deed; and that the defendant-bank is agreeable to supply certified copy of the misplaced sale deed besides lodging report with the police station Naraina, New Delhi and the bank has also principally agreed to enhance the overdraft limit from Rs. 20 Lacs to Rs. 25 Lacs on the basis of misplaced sale deed dated 04.05.2011. However, the defendant-bank has denied any claim for damages for wrongful misplacement of the document and denied that it has caused any financial loss to the applicant-plaintiff in the nature of depression or lowering of any market value of the property in question.

DECISION:

11. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties. I have also perused the pleadings and the documents filed on the record as well as case law cited at Bar by the learned Counsel for the applicant-plaintiff.

12. **First thing first**, it is pertinent to mention here that arguments were addressed on 19.12.2022 and during the course of arguments Mr.

Mahesh K. Chaudhary, Ld. Counsel for the defendant-bank stated at Bar that there are no issues with regard to prayers made by the applicant-plaintiff vide clauses (f) (g) (j) (k) & (l). However, Ld. Counsel for the applicant-plaintiff stated at Bar that he is not pressing for relief vide Clauses (b) to (e), (h) and (i) and the bottom line was that prayers sought qua clause (a) (m) (n) (o) & (p) are in dispute. In the said scenario, it would be expedient to refer to the provisions of Order XII Rule 6 CPC, which reads as under:-

“6. Judgment on admissions. (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

13. The nature and scope of “judgment on admission” has been explained by the Hon'ble Judges of the Supreme Court in a case titled as **Charanjit Lal Mehra v. Kamal Saroj Mahajan**, (2005) 11 SCC 279, observing that a conclusive admission is one that is derived from the factual and circumstantial matrix of the matter before the Court. It was observed that Order XII Rule 6 CPC is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants and an admission can be inferred from the facts and circumstances of the case without any dispute and thus enables to the Court to act upon such admission. Reference can be made to decision in the case of **Uttam Singh**

Duggal & Co. Ltd. v. United Bank of India, [(2000) 7 SCC 120], wherein it was observed that:

“In the objects and reasons set out while amending Rule 6 of Order 12 CPC it is stated that ‘where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment **at least to the extent of the relief** to which according to the admission of the defendant, the plaintiff is entitled’.

14. In another decided case titled as **Payal Vision Ltd. v. Radhka Choudhary**, (2012) 11 SCC 405, it was held that admission must be unambiguous, explicit, and adequate to give the requested relief in order to serve as the foundation for the decision. Admission used to support a judgement must be relevant to the issues at stake in the suit. The relevant para of the said judgment is reproduced hereunder:

“To sum up, Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case.”

15. Reverting to the instant case, it is admitted case that the original sale deed dated 04.05.2011 registered on 16.05.2011 in respect of basement and ground floor of the premises in question was deposited with the defendant-bank on creation of equitable mortgage and the bank has got the sale deed misplaced and is not in a position to return the same despite the fact that loan amount vide account No. 02226011000077 applied for in the month of July 2007 for R. 15,94,000/- has since been cleared. That being the case, *prima facie* this appears to be a stark case of gross negligence and deficiency in services provided to the customers by the defendant-bank.

16. All said and done, whether or not any mental loss and agony, or

for that matter whether the value of the property has been depressed in the market for lack of original sale deed, is a question of fact and a triable issue. Needless to state that the applicant-plaintiff shall be enjoined upon to lead evidence, oral as well as documentary, so as to substantiate that loss of the original sale deed has resulted in some depreciation or value of the property getting depressed in the market and has to count as to how and in what manner he has suffered mental loss and agony. Although, the learned Counsel for the applicant-plaintiff has placed reliance on in the decision in the case of **Bank of India v. Mustafa Ibrahim Nadiadwala**, MANU/CF/0809/2016 and **The Manager, Bank of Baroda v. Susanta Saha & Anr.**, MANU/SCOR/31546/2019, I am afraid the said case law is of no help as the decisions in such cases whereby damages were awarded to the consumers for loss of original documents by the Bank emanated from **the Consumer Protection Act, 1986**, which provides for an altogether different manner of adducing evidence led by the parties and appreciation thereof. The instant suit is filed under common law and governed by CPC and the Indian Evidence Act and the parties shall be required to lead evidence upon the same so that this Court could arrive at an informed decision.

17. Having said that, the parties are not at issue with regard to certain reliefs, which can be decided based on admissions made by the defendant Bank in its pleadings as well the loan documents filed on the record. It would be expedient to refer to the such claims/reliefs one by one:

17.1 Relief vide clause (f):- Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant bank thereby directing the defendant

Bank to enhance the Overdraft Limit (Loan Against Property) to Rs. 25,00,000/- on the basis of Sale Deed dated 04.05.2011 registered on 16.05.2011 with respect to the basement and ground floor of the property No. F-28, Naraina Vihar, New Delhi -110028, that has been lost by the defendant bank:-

Without further ado, the defendant-bank is agreeable to enhance the overdraft limit subject to the applicant-plaintiff fulfilling all norms and based on the certified copy of the sale deed dated 04.05.2011 registered on 16.05.2011 or in the alternative by creating equitable mortgage in the other portion of the property covered by sale deed dated 05.07.2007 in respect of first and second floor with roof rights in the same property. Therefore, there can be no legal hindrance in grant of this relief.

17.2 Relief vide clause(g):- Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant bank, thereby directing the defendant bank to transfer the Lien from Laminated Original Sale Deed dated 05.07.2007 of plaintiff with respect to the first floor and second floor with roof rights of property bearing No. F-28, Naraina Vihar, New Delhi-110028 to sale deed dated 04.05.2011

registered on 16.05.2011 with respect to the Basement and Ground Floor of the property No. F-28, Naraina Vihar, New Delhi-110028 which has been lost by the defendant bank with respect to Overdraft Account No: 02225085001873 and after transferring the said Loan Account to release the Laminated Original Sale Deed dated 05.07.2007 to the plaintiff, since the Loan Account on this Sale Deed already stands settled:

The defendant bank in its written statement has no objection. At the cost of repetition, loan amount taken in July-2007 has since been fully settled, and therefore, there is no legal hindrance in grant of such relief.

17.3 Relief vide clause (j):- Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant bank, thereby, directing the defendant bank to get the Notice/Advertisement, prominently published in Two leading newspapers at the cost of the defendant bank in Times of India (English Edition) and Navbharat Times (Hindi Edition) stating and notifying the general public that the original sale deed dated 04.05.2011 registered on 16.05.2011 with respect to the Basement and Ground Floor of the property No. F-28, Naraina

Vihar, New Delhi-110028 which is registered in the name of the plaintiff and which was in the custody of the defendant bank, has been lost or misplaced by the defendant bank:

The defendant bank in its written statement is ready and willing to get the public notice issued, and therefore, on this count too there can be no legal hindrance in providing such relief.

17.4 Relief vide clause (k):- Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant bank thereby, directing the defendant bank to notify in writing about the loss of the original sale deed dated 04.05.2011 registered on 16.05.2011 with respect to the Basement and ground floor of the property No. F-28, Naraina Vihar, New Delhi-110028 to the SHO Naraina Police Station, Delhi and to the Sub-Registrar concerned with a copy to the plaintiff:

The defendant-bank in its written statement has agreed to notify the Sub-Registrar as also the SHO PS Naraina about loss of such documents. Therefore, there is no legal hindrance in providing such relief as well.

17.5 Relief (l):- Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant

bank, thereby, directing the defendant bank to provide certified copy of the Sale Deed dated 04.05.2011 registered on 16.05.2011 from the office of the Sub-Registrar to the plaintiff, at the cost of the defendant bank:

The defendant-bank has no objection and it is ready and willing to provide the certified copy of the sale deed dated 04.05.2011 registered on 06.05.2011 after getting the same available from the office of Sub-Registrar at the cost of the defendant-bank. Hence, said relief could also be granted straight away.

18. In view of the foregoing discussion, the present application under Order XII Rule 6 CPC is partly allowed and same is disposed off in the following manner:-

(i) a decree is passed in favour of the plaintiff and against the defendant bank thereby directing the defendant Bank to enhance the Overdraft Limit (Loan Against Property) to Rs. 25,00,000/- on the basis of the certified copy Sale Deed dated 04.05.2011 registered on 16.05.2011 with respect to the basement and ground floor of the property No. F-28, Naraina Vihar, New Delhi -110028; or in the alternative;

(ii) a decree is passed in favour of the plaintiff and against the defendant bank, thereby directing the

defendant bank to transfer the Lien from Laminated Original Sale Deed dated 05.07.2007 of plaintiff with respect to the first floor and second floor with roof rights of property bearing No. F-28, Naraina Vihar, New Delhi-110028 to sale deed dated 04.05.2011 registered on 16.05.2011 with respect to the Basement and Ground Floor of the property No. F-28, Naraina Vihar, New Delhi-110028 which has been lost by the defendant bank with respect to Overdraft Account No: 02225085001873 and after transferring the said Loan Account to release the Laminated Original Sale Deed dated 05.07.2007 to the plaintiff, since the Loan Account on this Sale Deed already stands settled;

(iii) a decree is passed in favour of the plaintiff and against the defendant bank, thereby, directing the defendant bank to get the Notice/Advertisement, prominently published in Two leading newspapers at the costs/expense of the defendant bank in Times of India (English Edition) and Navbharat Times (Hindi Edition) stating and notifying the general public that the original sale deed dated 04.05.2011 registered on 16.05.2011 with respect to the Basement and Ground Floor of the property No. F-28, Naraina Vihar, New Delhi-110028, which is registered in the name of the plaintiff and which was in the

custody of the defendant bank, has been lost or misplaced by the defendant bank;

(iv) a decree is passed in favour of the plaintiff and against the defendant bank thereby, directing the defendant bank to notify in writing about the loss of the original sale deed dated 04.05.2011 registered on 16.05.2011 with respect to the Basement and ground floor of the property No. F-28, Naraina Vihar, New Delhi-110028 to the SHO Naraina Police Station, Delhi and to the Sub-Registrar concerned with a copy to the plaintiff;

(v) a decree is passed in favour of the plaintiff and against the defendant bank, thereby, directing the defendant bank to apply and provide certified copy of the Sale Deed dated 04.05.2011 registered on 16.05.2011 from the office of the Sub-Registrar to the plaintiff, at the cost of the defendant bank.

19. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

20. From the pleadings of the parties, the following issues are framed:-

1. Whether the defendant-bank was negligent and deficient in providing its services and breached its duty and obligation towards the plaintiff by losing or misplacing the original sale deed dated 04.05.2011

registered on 16.05.2011 in respect of basement and ground floor of property No. F-28, Naraina Vihar, New Delhi-110028? OPP.

2. Whether the plaintiff is entitled to be indemnified by the defendant bank for the loss of original sale deed dated 04.05.2011 registered on 16.05.2011 with respect to basement and ground floor of property No. F-28, Naraina Vihar, New Delhi-110028? OPP

3. Whether the plaintiff is entitled for declaration that market value of the basement and ground floor of the property in question has been depressed by Rs. 50 Lacs due to loss of its original sale deed dated 04.05.2011 registered on 16.05.2011? OPP.

4. Whether the plaintiff is entitled to compensation for loss in market value of the property in question for loss of original sale deed? OPP

5. Whether the plaintiff is entitled for a decree for compensation to the tune of Rs. 10,00,000/- towards mental agony, torture and harassment at the hands of the officials of the defendant bank? OPP.

6. Whether the plaintiff is entitled to *pendente lite* and future interest @ 24% per annum on the total compensation claimed by him or as may be determined by the Court? OPP.

7. Relief.

21. The parties are directed to file list of witnesses within 30 days from today with an advance copy being exchanged *inter se*. Put up the matter for plaintiff's evidence on **26th and 27th April, 2023**. **The copies of the affidavits of the witnesses along with documents to be filed in evidence be supplied to the opposite counsel by way of hard as well soft copies at least 15 days prior to the next date of hearing.**

Announced in open Court
on this 1st March, 2023

(Dharmesh Sharma)
Principal District & Sessions Judge
New Delhi/PHC/01.03.2023