IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20024 of 2014

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1. Tapan Kumar Banerjee, son of Late Neel Ratan Banerjee.
2. Manami Banerjee, Wife of Sri Tapan Kumar Banerjee, Both are resident of Flat No. C-43, Ashray Home, Ara Garden Road, Jagadeo Path, Patna-14.

.... Petitioner/s

Versus

1. The State Bank of India through the Chief General Manager, Main Branch Building, State Bank of India, Gandhi Maidan, Patna.
2. The General Manger, Main Branch Building, State Bank of India, Gandhi Maidan, Patna.
3. The Deputy General Manager, Main Branch Building, State Bank of India, Gandhi Maidan, Patna.
4. The Assistant General Manger, Stressed Assets Recovery Branch, 2nd Floor, Patna Main Branch Building, State Bank of India, Patna.
5. The Manager, State Bank of India, Raja Bazar Branch, Patna.
6. The Manager, SBI Home Finance Ltd., Abhishek Plaza, Exhibition Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bajarangi Lal, Adv.
For the Respondent/s : Mr. Anjani Kumar Mishra
For the Bank : Mr. Kaushlendra Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

3 09-01-2015 Heard learned counsel for the parties as with regard to the following prayer made in this writ application:-

"1. That the present writ petition is being filed for a direction upon respondents to return the original documents along with up to date interest and compensation to the petitioners, as several fix deposits were deposited by the petitioners with respondent Bank as security/equitable mortgage at the time of grant of loan but the same has not been refunded/returned by respondent bank despite the fact that petitioners have already satisfied and liquidated entire loan amount with interest to the bank. And/or for other order/orders direction/directions to which petitioner is entitled in facts and circumstances of instant case."

Learned counsel for the petitioners, in support of the aforementioned prayer, had firstly sought to rely on an order-sheet of the Lok Adalat to contend that once a compromise was reached in which the petitioners had undertaken to pay the loan amount with agreed interest, they on making such payment were also entitled for return of their original documents kept under security.

This Court has carefully perused the order-sheet of the Lok Adalat and from the same is clear even with naked eye that whatever had been agreed by the authorities of the Bank did not contain any such clause of return of the original documents. The note inserted by the petitioners below the order-sheet having signature of the presiding officer of Lok Adalat as also the parties is actually by an addition made by the petitioner no.1 himself and therefore that cannot legally bind the Bank to return the original document specially when in paragraph no.11 of the counter affidavit, the officials of the Bank have taken the following plea:-

> *"11. That as per settlement, the petitioners deposited Rs. 1,60,000/= with the Bank in lieu of which, the Respondent Bank granted the "No Dues Certificate's" in favour of the petitioners. At the time of this final deal, the petitioners were fully aware and in knowledge that the security papers if any, deposited by them with the Bank were not traceable but the petitioners were assured that the papers would be released as soon as these are retrieved. It is stated further that the fact of non-availability of the security was very much in the knowledge of petitioners before and during the*

> *process of negotiation of a compromise settlement. The petitioners, on the said assurance, didn't insist upon the Bank for release of their documents, before depositing the settlement amount."*

Mr. Kaushlendra Kumar Sinha, learned counsel for the Bank, however, has very fairly submitted that the Bank has got no dishonest intention and the authorities of the Bank are still striving hard to find out the documents and if that would become available, the same will be given back to the petitioners. In this regard, he has also explained that in the event of such original document of the petitioners being not become available in course of search, the duplicate copy will be obtained by the Bank and will be made available provided the petitioners cooperate in this exercise. For this purpose, he has referred to the statement made in paragraph no.15 to 19 of the counter affidavit, which reads as follows:-

> *"15. That, in response to the aforesaid two legal notices of the petitioners dated 16th May 2014 and 04th July 2014, the Respondent Bank informed the petitioners in writing that, after vigorous follow up made by the Bank, they closed the loan account under compromise on 27th March 2014. It was also stated herein that before they started negotiating a compromise settlement the petitioners had information that the LIC's Bond, UBI's FD certificate and IDBI Deep Discount Bond had been missing during migration of records of their loan account from Bank's Raja Bazar Branch to RACPC and finally to SARB and they had told the Bank that they would arrange taking duplicate from the concerned authorities and get their money back from*

them with a request to settle the dues under compromise. It was also indicated in the said letter in reply to the legal notice of the petitioners that, at the relevant period, the Bank had also expressed its willingness and readiness to extend all necessary help and cooperation to the petitioners in realizing proceed of the policies and other securities from the concerned financial institutions.

16. *That, despite the situation stated above, the petitioners sent another legal notice upon the Respondent Bank on 05th August 2014 and further they immediately files this writ petition before this Hon'ble Court.*

17. *That in this context it is stated that the Respondent Bank has not been idle rather they have been making vigorous efforts to trace out the relative security papers of the petitioners which have been missing or got dislocated in the heaps of the several hundreds of filed migrated to this Branch through the RACPC. It is not the deliberate and malafide act on part of the Respondent Bank in withholding their documents and not releasing the same to them.*

18. *That it is stated that if the petitioners retract from their promise that they would arrange taking duplicate from concerned authorities and get their money back, it is reiterated that they would extend all necessary help and co-operation to the petitioners in realizing proceeds of their policies and other securities from the concerned financial institutions provided the petitioners could co-operative with the Bank in doing the same amount also that the they have not realized the proceeds of their policies and securities. The Respondents is also ready to issue the certificate as with regard misplacement of all those policies and securities of their end.*

19. *That it is stated that the Respondent Bank would make every Endeavour and has been making serious efforts to*

either obtain duplicate of the instruments or maturity proceeds and shall hand over the same to the petitioners as soon as the Respondents gets the opportunity."

In the considered opinion of this Court, the facts of the present case does not make out any kind of issuance of a direction because of an inter-parte agreement before the Lok Adalat. In the Lok Adalat, there was no such clause of return of the documents as a condition precedent but, then, the Bank itself, having explained the facts in the counter affidavit, as noted above, has shown its preparedness to return the document or provide the duplicate copy thereof. Thus, if the petitioners want their document back, they must extend cooperation to the authorities of the Bank.

It is hoped that the impasse created on account of non-availability of the original documents of the petitioners will be brought to an end at an early date preferably within a period of four months from the date of receipt of this order by the authorities of the Bank.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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