IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

WP(C).No. 21515 of 2015 (L)

PETITIONER(S):

ALEXY SUSAN THOMAS, AGED 22 YEARS,
D/O.THOMAS V. ALEXANDER, R/O. VATTAMATHATHIL HOUSE,
PARAMPUZHA.P.O., KOTTAYAM, PIN-686 004.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENT(S):
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1. **THE MANAGER,**
   BANK OF BARODA, KODIMATHA BRANCH,
   KOTTAYAM-686 004.

2. **THE CHIEF MANAGER,**
   BANK OF BARODA, REGIONAL OFFICE, VASUDEVA BUILDING,
   T.D.ROAD, ERNAKULAM-682 011.

BY ADV. SRI.DEVAN RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 21515 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: A COPY OF THE COMMUNICATION DATED 19.03.2015 FROM SHERIDAN INTERNATIONAL SERVICES.

P2: A COPY OF THE RECEIPT OF THE GOLD LOAN.

P2(A): A COPY OF THE RECEIPT OF THE GOLD LOAN.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J.

W.P(C). No.21515 of 2015

Dated this the 24th day of July, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner has not been disbursed a loan, which has been sanctioned, despite the petitioner having agreed to create mortgage of the property. The assertions and counter assertions made by the petitioner and the respondent Bank with respect to sanctioning of the loan and the refusal to disbursal are all said to be oral and there is absolutely no substantiating documents produced by either of them.

2. The learned counsel for the petitioner submits that, the initial objection was with respect to the prior deed not being available. The petitioner through the Bank effected a paper publication dated 12.05.2015 through the Branch Manager itself. On looking at the notice published in Malayala Manorama, handed

over across the Bar, it is seen to be a notice published by the Manager, Bank of Baroda, Kodimatha Branch itself.

3. The further contention, which is admitted by the learned counsel appearing for the Bank, is that the petitioner had agreed to create mortgage by executing a proper Mortgage Deed, which the petitioner resiled from later, on the contention that it would require stamp duty to be paid. In any event, there is absolutely no requirement for a Mortgage Deed to be executed, if the Bank is situated in a notified area. Under the Transfer of Property Act, 1882, the mortgage could be created by deposit of title deeds confirmed by the mortgagor and that is the practice followed by all the Banks, including the Nationalised Banks. The submission of the learned counsel for the Bank that, a Mortgage Deed is insisted only since prior deed is not available, cannot be countenanced. The execution of a Mortgage Deed would not in any event create a better interest on the Bank than that available by deposit of title deeds. Nor would it cure the defect of the non-availability of the prior deed.

In such circumstances, if the petitioner agrees to make a deposit of the title deeds and also issue a subsequent confirmation letter, then necessarily the Bank would have to disburse the amounts, if the other conditions are satisfied by the petitioner. The petitioner shall approach the Bank within a week from the date of receipt of a copy of this judgment and deposit the title deeds as also issue a subsequent letter of confirmation, upon which the Bank shall consider the disbursal within two days from that date.

The writ petition is disposed of.

Sd/-

K. VINOD CHANDRAN,
JUDGE

sp