IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.10.2015

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.30388 of 2012

Mrs.Devatha Parthasarathy ... petitioner

Vs.

The Manager
Retail Assets Centre
Industrial Development Bank of India Ltd.,
Murugesan Naicker
Complex, III Floor,
Greams Road, Chennai - 600 006 ... Respondent

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondent to return to the petitioner the title deed other documents relating to the flat bearing apartment No.4, in the ground floor of the building 'Trishanku' Block 'B' Velacherry - Tambara Road, Pallikaranai, Chennai deposited with the bank by C.K.Unni Nair.

For petitioner : Mr.A.Muthkumar
For respondents : Mr.R.Nagasundaram

O R D E R

Heard the learned counsels appearing for the parties concerned.

2. This writ petition has been filed praying that this Court may be pleased to issue a writ of Mandamus directing the respondent to return to the petitioner the title deed and the other documents relating to the flat bearing apartment No.4, in the ground floor of the building Trishanku, Block B, Velacherry, Tambaram Road, Pallikaranai, Chennai.

3. It has been stated that the flat in question belonged to one C.K.Unni Nair, who had purchased the same, by way of a sale

deed, dated 19.9.2003, from Krishnan and Chitra Shivakumar. Subsequently, C.K.Unni Nair, represented by his power agent Shanmugham, had conveyed the flat to the petitioner, by way of a sale deed, dated 9.10.2007. The petitioner has been in possession and enjoyment of the flat from the date of its purchase.

4. It has been further stated that, only a small amount is due to be paid by its erstwhile owner to the Industrial Development Bank of India Limited, at the time of its purchase of the property by the petitioner. It has also been represented that the power agent Shanmugham would clear the debt and hand over the original sale deed obtained from the Bank. However, it has been found out that the vendor of the flat had committed the default in payment of the monthly installment of a sum of Rs.53,982/-. The petitioner had cleared the amount due to be paid by the vendor of the flat, by way of a cheque bearing cheque No.907016, dated 24.11.2009, drawn on the Corporation Bank, Indira Nagar Branch, Chennai. The petitioner had entered into an one time settlement agreement with the Bank to clear the amount due from the vendor. Even though the said amount had been paid to the Bank, by the petitioner, the original documents relating to the mortgage had not been returned to the petitioner, in spite of his several requests. In such circumstances, the petitioner had preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. The learned counsel appearing for the respondent Bank had submitted that the petitioner cannot claim any right over the title deed given to the Bank while granting an equitable mortgage by the borrower, C.K.Unni Nair, who had been granted certain loan facilities, by the Bank, for the purchase of the flat. As the original borrower, namely, C.K.Unni Nair, had committed defaults in the payment of dues, based on the requests made by the petitioner, an one time payment of Rs.7,41,046/- had been received from her, on 17.12.2009, towards the dues of the original borrower of the loan. However, the payment of the said amount, by the petitioner, would not give her any right to receive the title documents deposited by the borrower.

6. It has also been stated that the petitioner is not connected with the mortgage created by the original owner, namely, C.K.Unni Nair, even though the petitioner might have cleared the loan amount payable by the borrower. However, without a proper authorisation from the borrower, who had deposited the original documents, including the title deed relating to the property in question, the said documents cannot be returned to a third party. There is no provision to release the documents to a third party, even though she might have discharged the amount payable to the Bank. There is no provision

in law, which empowers the petitioner to claim the original documents submitted to the Bank, at the time of the creation of the mortgage, by the borrower. Therefore, the claim of the petitioner is liable to be rejected. The petitioner ought to have obtained a power of attorney from the borrower of the loan, for the closure of the loan account, in the prescribed format. Further, she should also obtain a special power of attorney for receipt of the original documents, in the prescribed format. As the petitioner had failed to obtain such power of attorney from C.K.Unni Nair, the original borrower of the loan amount, the request of the petitioner for the return of the original documents cannot be accepted.

7. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, it is clear that the petitioner had not been authorised, by way of a power of attorney, to close the loan account of the borrower of the loan, namely, C.K.Unni Nair. Further, she did not have a special power of attorney, in the prescribed format, for receiving the original documents submitted to the Bank, at the time of the creation of the mortgage relating to the property in question. The petitioner had not been able to show that she has a vested right to receive the documents, even though she might have cleared the entire loan amount, as per the one time settlement entered into with the Bank. As such, the relief prayed for by the petitioner cannot be granted. Hence, the writ petition stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:
The Manager
Retail Assets Centre
Industrial Development Bank of India Ltd.,
Murugesan Naicker
Complex, III Floor,
Greams Road, Chennai - 600 006

+1 cc to Mr.A.Muthukumar Advocate sr.53761
+1 cc to Mr.R.Nagasundaram Advocate sr.54366

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