

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.23462 of 2012

And

M.P.No.1 of 2012

R.Shivakumar

...Petitioner

Versus

1. The General Manager,
Small Industries Development Bank of India,
Overseas Towers,
No.756.L, Anna Salai (Opp. TVS),
Chennai - 600 002

2. Ms. G.Nalini

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent herein to release and hand over all the title deeds in original pertaining to the Flat No.B12, First Floor, Racquet Court Avenue, Door No.26, New Abishekpuram, Trichirapalli to the petitioner herein.

For Petitioner : Mr. Umashankar
for M/s.Srivatsava Asso.

For Respondents : Mr.K. Balamurali for R1
for M/s.Shivakumar
No Appearance for R2

ORDER

Heard Mr. Umashankar, learned counsel appearing for the petitioner and Mr.K. Balamurali, learned counsel appearing for the first respondent. The learned counsel for the second respondent has been absent since October, 2013 and even on the last hearing on 23.03.2015, the learned counsel for the second respondent was not present.

2. The petitioner seeks for a direction upon the first respondent to release and handover all the title deeds in original pertaining to the Flat No.B12, First Floor, Racquet Court Avenue, Door No.26, New Abishekpuram, Trichirapalli.

3.The facts which are necessary for the disposal of the writ petition are that the first respondent sanctioned a term loan of Rs.39.25 Lakhs to M/s.Auto Links and to secure the loan, a mortgage was created by depositing the original title deeds, which stood in the name of a proprietorship firm, in which the second respondent was the proprietor. The petitioner is the husband of the second respondent and there were disputes between them and F.C.O.P.No.132 of 2009 was filed before the Principal Family Court, Chennai for annulment of the marriage between the petitioner and the second respondent. It is stated that a decree of divorce was granted. Earlier the petitioner filed a suit against the second respondent and two others in C.S.No.126 of 2010 and ultimately the suit was decreed pursuant to joint compromise memo on 02.03.2011. So far as the firm Auto Link is concerned and the bank accounts, the following statement was arrived at

" 2. In so far as the above suit is concerned, the first defendant (wife) who is present conferred with all rights in the business and management of the Firm Styled as "AUTO LINKS"at premises Plot No.9, Chengalvarayan Street, Shanthi Nagar, Ramapuram, Chennai - 89, a company which is a manufacturing unit of Auto components, along with allied machineries, fixtures and assets and liabilities thereto, shall herein before and hereafter no longer be that of the first defendant, to be more precise, she hereby foregoes all her claims and rights over the said business of "Autolinks"and the prayer 'B' in the plaint may be decreed in favour of the plaintiff. The plaintiff will be the sole owner of the said property morefully described in the schedule "B" in

plaint.

3. The first defendant accepts to issue/give a "NO OBJECTION CERTIFICATE" and shall also withdraw the objection letter dated 30.12.2010 objecting to the bank operations of the company styled "AUTO LINKS" on Account No.24250500000005 thereby it is made clear that the first defendant no longer claims any right over the business of Auto Links."

4. It is submitted that in the light of the undertaking given by the defendant in the joint memo of compromise, which was recorded and decree was passed, it is seen that the second respondent has no longer any claim or right over the business M/s. Auto Links. It is perhaps the reason on account of which the second respondent though entered appearance through counsel has failed to appear before this and contest this writ petition.

5. In the light of the above facts, there should not be any difficulty for the first respondent to return the documents to the petitioner, in the light of the compromise decree in the suit in CS 126/2010 and subsequent divorce having been granted by the Family Court. However, the interest of the first respondent should be sufficiently safe guarded in this regard. Therefore, the petitioner is directed to execute a indemnity bond clearly stating as to how he is entitled to the documents by referring to the relevant clauses in the joint memo of compromise and keep the first respondent indemnified throughout. On the compliance of the above, the first respondent shall consider and return the original title deeds to the petitioner within a period of four weeks from the date on which indemnity bond is furnished.

6. The writ petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

mrp/pri

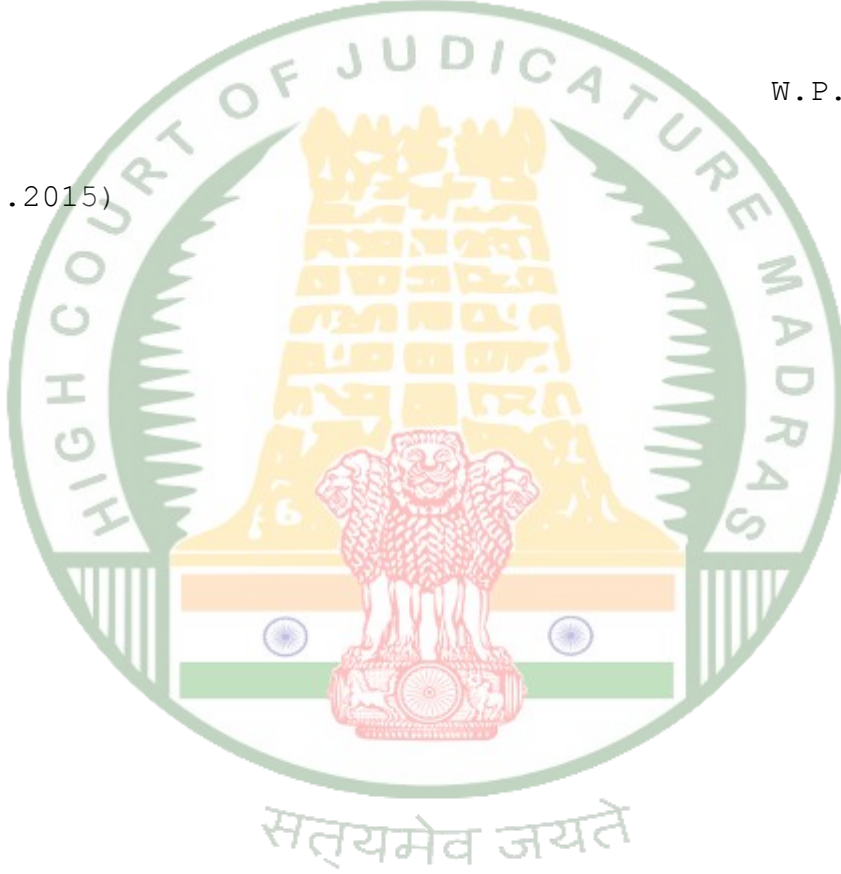
To

The General Manager,
Small Industries Development Bank of India,
Overseas Towers,
No.756.L, Anna Salai,
Anna Salai (Opp. TVS),
Chennai - 2

1 CC to M/s.Shivakumar & Suresh, Advocate SR.No. 17976

W.P.No.23462 of 2012

GJ (CO)
PSI (15.04.2015)



WEB COPY