IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2010

Coram :

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.26371 of 2010

Kumarasamy .. Petitioner

-vs-

1. The Assistant General Manager,
   Central Bank of India,
   Asset Recovery Branch,
   Post Box No.503,
   48/49, Montieth Road,
   Chennai.

2. The Manager,
   Central Bank of India,
   Krishnagiri Branch,
   Krishnagiri. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of writ of Mandamus to direct the 1st respondent to release the title deeds belonging to the petitioner in respect of the land and house situate in 12C Chinnu Vathiyar Street, Dharmapuri-1 and 9 acres of land situate in Bagalpatti village, Nallampalli Union, Dharmapuri District in pursuance of full and final settlement of the loan amount which has been acknowledged by the 1st respondent in their letter dated 22.6.2010.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : No appearance

O R D E R

(Order of the Court was made by B.RAJENDRAN, J.)

The petitioner, who availed cash credit facility from the second respondent, had filed this writ petition for a mandamus directing the first respondent to release the title deeds belonging to the petitioner.

2.According to the petitioner, as per the one-time settlement, he has paid in full and final settlement towards the cash credit facility availed and it has also been acknowledged by the first respondent as early as on 22.06.2010. Earlier, the first respondent filed O.A.No.313 of 2008 on the file of Debts Recovery Tribunal-III, Chennai, for recovery of the amount due with interest and during the pendency of the application, one time settlement was arrived at for Rs.77 lakhs, which was promptly paid by the petitioner and was also acknowledged by the bank. The said payment was also recorded by the Debts Recovery Tribunal in its order dated 19.07.2010 and the Tribunal has also directed the Registry to return the documents to the respondents-bank. Therefore, as per the order of Debts Recovery Tribunal-III, according to the petitioner, the documents are now in the custody of the respondents-bank.

3.It is also submitted by the petitioner that the petitioner was the guarantor for the loan obtained by one Mr.A.Kumar and for the said purpose, the bank has retained the documents, as there is subsisting amount due by that borrower. According to the petitioner, the said borrower himself has deposited a sum of Rs.5,00,000/- in a no-lien account and that the petitioner is also ready to indemnify the bank if there is any amount still payable by the borrower. The petitioner would contend that the documents being exclusively given for the cash credit facility availed by him and the same having been settled in full, the documents ought to have been returned to the petitioner. The petitioner has made a representation 26.10.2010 seeking release of documents, in spite of which, as the same was not returned, the petitioner has come forward with the present writ petition seeking mandamus.

4.When the matter came up for admission, this Court permitted the petitioner to take private notice to the respondents-bank. Accordingly, notice has been duly served and proof of service has also been filed in the Registry. Though the respondents-bank have been duly served and their names have been shown in the cause-list, none appeared on behalf of the respondents.

5.It is an admitted fact that a sum of Rs.77 lakhs has been paid as one-time settlement for the loan amount sought to be recovered by the bank. The said payment has also been acknowledged by the bank by their letter dated 22.06.2010. In fact, a memo has been filed by the respondents-bank before the Tribunal to the effect that the petitioners have paid a sum of Rs.77 lakhs in full and final settlement of the claim in the Original Application. Recording the said memo, the Tribunal, by its order dated 19.07.2010 disposed of the Original Application filed by the bank as settled out of court and also directed the Registry to return the documents to the respondents-bank. Pursuant to the said order of the Tribunal, the petitioner has made a representation dated 26.10.2010 seeking for the return of documents. In spite of which, according to the petitioner, there is no written reply from the respondents-bank.

6.Even before this Court, there is no representation for the respondents-bank, in spite of the name of the respondents-bank has been shown in the cause list. So far as the petitioner is concerned, since he has settled the entire amount due to the respondents-bank as per the one time settlement and the case before the Tribunal was also closed as settled out of Court and the receipt of the documents having been acknowledged by the respondents-bank, the respondents-bank can have no justification in retaining the petitioner's documents. That apart, the petitioner has also undertaken to indemnify the bank in the event of any amount is due in respect of the personal guarantee given to another borrower, namely, A.Kumar. The undertaking may be recorded by the bank.

7.In view of the above, mandamus is issued directing the respondents-bank to release the title deeds belonging to the petitioner in respect of the land and house situate in 12C Chinnu Vathiyar Street, Dharmapuri-1 and 9 acres of land situate in Bagalpatti village, Nallampalli Union, Dharmapuri District. The writ petition is, accordingly, allowed. No costs.

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

sra

To

1. The Assistant General Manager,
   Central Bank of India,
   Asset Recovery Branch,
   Post Box No.503,
   48/49, Montieth Road,
   Chennai.

2. The Manager,
   Central Bank of India,
   Krishnagiri Branch,
   Krishnagiri.

1 cc to Mr.V.Chandrasekaran, Advocate, Sr.No.87690

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GV {CO}
TP/21.12.2010.