IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.06.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9264 of 2016

P.K.Venkatachalam ... Petitioner

Vs.

1.State Bank of India,
Rep. by its Manager,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal Town,
Namakkal Taluk and District.

2.R.Mirunallini ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent-Bank to forthwith release the original documents of the petitioner illegally kept by the 1st respondent-Bank.

For Petitioner : Mrs.P.T.Asha
for M/s.Sarvabhauman Association

For respondents : Mr.M.L.Ganesh (For R1)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, directing the 1st respondent-Bank to forthwith release the original documents of the petitioner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner is a business man and he is doing business of poultry feeds and raw feed materials. He is having banking transaction with the 1st respondent-Bank. During the month of July, 2007, the 2nd respondent herein, whose father is known to the petitioner, had availed an educational loan of Rs.15 lakhs from the 1st respondent-Bank. The 2nd respondent's father was also a joint applicant for the said educational loan. The 2nd respondent was due to undergo a Masters program in Bio Informatics at the University of the Manchester. The petitioner had given a personal guarantee for the said loan. Apart from executing the Application-cum-Appraisal Form for Education Loan dated 14.07.2007 and the guarantee agreement of the same date, the petitioner had not executed any other documents. As per the terms of the loan agreement, the loan was repayable in 60 equated monthly installment of Rs.31,425/- and this equated monthly installment would change depending upon the change in the rate of interest. Therefore, as per the loan agreement, the repayment was to start from September, 2009 onwards. Except executing the personal guarantee, the petitioner did not offer any of his property as security, for the loan borrowed by the 2nd respondent. It appears that the 2nd respondent was unable to repay the loan amount on account of the facts that she could not secure an employment and her father also died.

2-2.But, the petitioner was under the impression that the said educational loan had been repaid by the 2nd respondent, as he had not heard anything from the Bank after 14.07.2007. While so, all of a sudden, during the month of February, 2013, the petitioner received a notice dated 02.02.2013 from the 1st respondent-Bank, wherein the 1st respondent had demanded repayment of a sum of Rs.21,16,014/- being the amount due towards the educational loan. The said notice was issued to the 2nd respondent and her father as well. The said notice demanded repayment within a period of 10 days.

2-3.When the petitioner contacted the 2nd respondent, he was informed by the 2nd respondent that the said legal notice contained incorrect statement, since there was no whisper about the payments made by the 2nd respondent towards loan amount and that she is negotiating with the 1st respondent-Bank. Hence, the petitioner was under the impression that the issue had been resolved.

2-4.While so, the petitioner received a notice from the District Court, Namakkal in O.S.No.208 of 2014 which was filed by the 1st respondent-Bank against the petitioner herein and the 2nd respondent for recovery of a sum of Rs.24,77,785/-, together with interest at the rate of 12% p.a., from the date of suit till the date of payment and thereafter at the rate of 6%. In the said suit, it had been clearly stated by the Bank that the petitioner had only executed a guarantee agreement on 14.07.2007. On receipt of the notice, the petitioner approached the 2nd respondent's mother and she informed the petitioner that the 2nd respondent was yet to get an employment and they had made some payment which had not been taken note of by the Bank and she also informed the petitioner that they were negotiating with the Bank.

2-5.In the meanwhile, the petitioner's house had been mortgaged for obtaining loan on behalf of his Company and the said loan was pre-closed and therefore, the petitioner, by his letter dated 12.03.2015, had requested the 1st respondent-Bank to release the original documents, with which he had created an equitable mortgage in favour of the 1st respondent-Bank. The documents had been deposited on 05.12.2005 and 10.11.2006 as a security for the amounts due to the 1st respondent-Bank from P.K.V.Bio Form Pvt Ltd, P.K.Venkatachalam Poultry Form and Kavery Bio Proteins Pvt. Ltd.. Thereafter, the deposit was extended to cover the enhanced facilities and a mortgage loan of Rs.40 lakhs due from one V.Shanthamoorthi. To the petitioner's shock and surprise, the 1st respondent-Bank sent a reply dated 27.03.2015 refusing to return the documents stating that under his letter of arrangement dated 14.07.2007, the petitioner had extended the mortgage of the property. It was further stated that the 1st respondent-Bank had exercised its rights of general lien provided under Section 171 of the Contract Act and stated that the document would be released only after the satisfaction of the educational loan due from the 2nd respondent. Thereafter, the petitioner issued a legal notice on 02.07.2015 stating that he had not extended a letter of arrangement to cover the loan of the 2nd respondent and he had also demanded the return of the documents. But, by their letter dated 17.07.2015, the 1st respondent-Bank had replied that as a guarantor, the petitioners is also liable to repay the educational loan amount borrowed by the 2nd respondent..

2-6.It is stated by the petitioner that meanwhile, the Central Government had come forward with a one time measure to totally waive the interest in respect of education loan that had fallen due from 01.04.2009 to 31.03.2014. The 2nd respondent's mother had addressed a letter to the 1st respondent-Bank requesting the Bank to give them the benefit of the waiver and expressing their desire to settle the dues. But, there was no response from the 1st respondent-Bank. Since the 1st respondent-Bank refused to release the documents of the petitioner, the petitioner has come forward with the present writ petition for the relief as stated supra.

3.When the matter was taken up for consideration, the learned counsel for the petitioner reiterated the averments in the affidavit and submitted that the petitioner had executed only a guarantee agreement on 14.07.2007 and it does not contain any clause to the effect that the petitioner is offering his property as collateral security for the educational loan borrowed by the 2nd respondent. The petitioner had mortgaged the property only in respect of the loan amount availed by him for his business, which has nothing to do with the educational loan availed by the 2nd respondent. Though the petitioner has paid the entire loan amount availed by him, the 1st respondent-Bank is refusing to return the documents stating that they have exercised their rights of general lien provided under Section 171 of the Contract Act. When the petitioner has not offered his property as security for the educational loan availed by the 2nd respondent, there is no justification on the part of the 1st respondent-Bank in not returning the documents. Thus, the learned counsel for the petitioner sought for suitable direction to the 1st respondent-Bank.

4.But, the learned counsel appearing for the 1st respondent-Bank, by filing a counter, submitted that as per the banker's lien under Section 171 of Indian Contract Act, the 1st respondent-Bank has got every right to retain the original title deeds until the loan amount, for which the petitioner stood as guarantor, is fully discharged. It is further submitted by the learned counsel for the 1st respondent that initially the Bank had inadvertently filed a suit in C.C.No.35 of 2015 before the District Consumer Disputes Redressal Forum, Namakkal, instead of approaching the Debt Recovery Tribunal. Subsequently, the 1st respondent-Bank has filed O.A.No.840 of 2015 before the Debt Recovery Tribunal, Madurai. Now, the petitioner has to demonstrate his case before the Debt Recovery Tribunal, Madurai, by adducing evidence; hence, the present writ petition is not maintainable before this Court. If any direction is issued by this Court in this writ petition as sought for by the petitioner, it will affect the rights of the 1st respondent-Bank.

5.Heard the submissions made on either sides and perused the materials available on record.

6.It is seen that the petitioner has stood as guarantor for the educational loan availed by the 2nd respondent and he executed a guarantee deed dated 14.07.2007. According to the petitioner, he has not offered any of his property as security for the educational loan availed by the 2nd respondent. Further, it is the case of the petitioner that he has paid the entire loan amount availed by him for his business; but, inspite of repayment of entire loan amount, the 1st respondent-Bank is refusing to return the document stating that they are having general lien, under Section 171 of the Contract Act, over the property, since the petitioner has stood as guarantor for the educational loan availed by the 2nd respondent and unless the said educational loan amount is discharged, the documents cannot be returned to the petitioner.

7.In this regard, it would be appropriate to extract Section 171 of the Indian Contract Act, which reads as follows_

> "171.General lien of bankers, factors, wharfingers, attorneys and policy-brokers_ Bankers, factors, wharfingers, attorneys, of a High Court and Policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

8.Further, in an identical situation, in the case of State Bank of India vs. Jayanthi [2011(2)CTC 465], which was relied upon by the learned counsel for the petitioner, a Division Bench of this Court rejected the case of the Bank and directed the Bank to return the documents. Against the said order of the Division Bench, an appeal has been filed by the State Bank of India, in S.L.P.No.11603 of 2011 and the said case is now pending before the Honourable Supreme Court.

9.Under such circumstances, I find some force in the submission made by the learned counsel for the 1st respondent-Bank that as provided under Section 171 of the Contract Act, the Bank has general lien over the property of the petitioner, who has stood as guarantor for the educational loan availed by the 2nd respondent. The petitioner has to establish his case only before the Debt Recovery Tribunal, Madurai in O.A.No.840 of 2015 filed by the Bank. Therefore, the relief sought for by the petitioner in the present writ petition cannot be granted by this Court. Hence, the writ petition is liable to be dismissed.

For the foregoing reasons, the writ petition is dismissed. No costs.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

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To
1.The Manager,
State Bank of India,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal Town,
Namakkal Taluk and District.

+1 cc to M/s.Sarvabhauman Associates sr.29156/16
+1 cc to Mr.M.L.Ganesh Advocate sr.29352/16

W.P.No.9264 of 2016

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