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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5484/2018

AMITESH RAO AND ANR. ..... Petitioners

Through: Mr Aman Bhalla, Advocate.

versus

ICICI BANK AND ORS. ..... Respondents

Through: Mr Punit K. Bhalla, Advocate for ICICI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 11.10.2018

1. The petitioners have filed the present petition, *inter alia*, praying that directions be issued to respondent nos.1 & 2 to return the original Sale Deed dated 16.11.1999 in respect of one of the floors of the property bearing Plot No.48 on Road No.H-33, DLF Qutub Enclave, Gurgaon (hereafter 'the mortgaged property').

2. On 29.10.1999, the petitioners had availed a home loan from the respondent no.1 (ICICI Bank) in respect of the mortgaged property.

3. The petitioners state that the Sale Deed in respect of the mortgaged property was handed over to the legal counsel engaged by ICICI Bank for the aforesaid purposes.

4. ICICI Bank assigned the loan to respondent no.2 (Kotak Mahindra Bank). Consequenlty, all the documents furnished by the petitioners for securing the due repayment of the loan were also transferred to Kotak

Mahindra Bank.

5. Admittedly, the petitioners discharged their liability and have repaid the loan and interest due thereon.

6. The petitioners were desirous of selling the mortgaged property and approached Kotak Mahindra Bank for return of their original documents. At that stage, the petitioners were shocked to know that the original Sale Deed of the mortgaged property was not one of the documents that was available with Kotak Mahindra Bank. The petitioners discovered that the Sale Deed in question was not transferred from ICICI Bank to Kotak Mahindra Bank.

7. ICICI Bank now claims that the Sale Deed of the mortgaged property was never received by it. The learned counsel appearing for the ICICI Bank further, submits that the procedure adopted by the bank is that it engages a lawyer who is present at the time of registration of the Sale Deed and hands over the cheques for the amount disbursed directly to the seller of the property in question. He also collects the registration receipts to enable him to collect the Sale Deeds directly from the concerned Registering Authority. He states that in this case, enquiries are being made to ascertain the whereabouts of the lawyer who was engaged by ICICI Bank and efforts are being made to trace out the Sale Deed in question.

8. It is apparent from the above that whether any lapse has occurred on the part of the lawyer appointed by the ICICI Bank or the Kodak Mahindra Bank is not material. ICICI Bank cannot avoid the responsibility for the same. Clearly, the petitioners cannot be held responsible for the same. They are entitled to their documents on the strength of which the loan had been disbursed to them.

9. In this view, it is directed that the ICICI Bank will take all necessary

steps to trace out the Sale Deed. If the Sale Deed is not traceable, ICICI will take steps to lodge the FIR and ensure that the certified copy of the Sale Deed is obtained from the Registering Authority. ICICI Bank would also indemnify the petitioners from any loss or expense sufferred by them on account of loss or misuse of the Sale Deed in question.

10. No further relief can be granted to the petitioners in this petition. However, it is clarified that it will be open for the petitioners to institute appropriate proceedings for seeking damages and/or for deficiency of service.

11. The petition is disposed of.

12. Order *dasti*.

VIBHU BAKHRU, J

OCTOBER 11, 2018
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