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

\+ W.P.(C) 6967/2018

ANIL KUMAR SANWARIA ..... Petitioner

Through: Mr Parvinder Chauhan, Advocate.

versus

MAGMA FINCORP LIMITED & ORS ..... Respondents

Through: Mr H. S. Parihar and Mr K. S. Parihar, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% 09.07.2018

<u>CM No.26386/2018</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 6967/2018 & CM No.26385/2018</u>

2. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, praying as under:-

> "(i) Issue writ in the nature of Mandamus, thereby, directing the Respondent No. 1 & 2 to return the Original Documents pertaining to the subject property as well as other pre-written documents, undertakings, contracts and blank cheque/PDCs, to the Petitioner;
>
> (ii) Issue writ in the nature of Mandamus, thereby, directing the Respondent No. 1 85 2 to issue No-Dues Certificate with respect to the loan account No. HL0031/GDGLG0005734;
>
> (iii) Issue writ in the nature of Mandamus, thereby, directing the Respondent No. 3 to take appropriate and/or punitive action against the Respondent Nos. 1 &2;

(iv) Award the compensatory and exemplary costs in favour of the Petitioner and against the Respondents."

3. Essentially, the grievance of the petitioner is that although the petitioner has discharged the loan taken against security of the title deeds of a house property, respondent no.2 has not handed over the title deeds in favour of the petitioner.

4. It is submitted that the petitioner had filed a complaint before the District Forum, under the Consumer Protection Act, 1986 and the said complaint is pending. It is claimed that during the pendency of the complaint, the petitioner had, without prejudice to his rights, paid all the dues against the loans availed by him from GE Housing Finance Limited (subsequently merged with respondent no.2).

5. However, respondent no.2 has failed to release the title deeds provided by the petitioner as security against the said loan. From the communications issued by respondent no.2, it appears that respondent no.2 is withholding the said title deeds on the ground that the petitioner has not withdrawn his complaint made under the Consumer Protection Act, 1986. The petitioner asserts that he is not required to withdraw the complaint. It is the petitioner's case that respondent no.2 cannot withhold his documents pending decision in the complaint, as all payments were made by the petitioner without prejudice to his rights and contentions.

6. It is clear from the documents on record that no further amount is due by the petitioner and respondent no.2 had acknowledged that his debt has been discharged. The petitioner had also issued a legal notice dated 15.06.2018 calling upon respondent no.2 to release the title deeds.

Respondent no.2 has responded to the said notice by stating that it had entered into a One Time Settlement (OTS) and has given up substantial claims against the petitioner. According to respondent no.2, the OTS also entailed that the petitioner withdraw his consumer complaint.

7. Mr Chauhan, leanred counsel appearing for the petitioner has referred to the *"Master Direction – Non-Banking Financial Company – Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016"* issued by the Reserve Bank of India. In terms of paragraph 29(3) of the said Directions, all Non-Banking Financial Companies (NBFCs) are required to release the security on repayment of all dues or on realisation of the outstanding amount of loan. Paragraph 29(3) of the said Directions is set out below:-

> "(3) Applicable NBFCs shall release all securities on repayment of all dues or on realisation of the outstanding amount of loan subject to any legitimate right or lien for any other claim they may have against borrow. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which applicable NBFCs are entitled to retain the securities till the relevant claim is settled/paid."

8. Mr Chauhan has also referred to paragraph 120 of the said Directions, which expressly provides that violation of the said Directions would invite penal action under the provisions of the Reserve Bank of India Act, 1934.

9. Insofar as respondent nos.1 & 2 are concerned, they are privately held companies and the relief sought against them may not be maintainable in these proceedings. However, the Reserve Bank of India is obliged to take

the necessary action if it is found that there is any violation of its directions.

10. Mr Parihar, learned counsel appearing for the Reserve Bank of India states that the Reserve Bank of India shall examine the present petition as a complaint for violation of the aforesaid directions.

11. In view of the above, the present petition is disposed of by directing the Reserve Bank of India to examine the present petition as a complaint made on behalf of the petitioner, and take the necessary action under paragraph 120 of the said Directions if it is found that the complaint made is merited. The decision in this regard would be communicated to the petitioner within a period of four weeks from today.

12. In the meanwhile, respondent nos.1 & 2 are also given an opportunity to release the title deeds to the petitioner within a period of two weeks from today. In the event, respondent nos.1 & 2 do so, they shall communicate the same to the Reserve Bank of India and no further action in this regard would be required to be taken by the Reserve Bank of India. However, if respondent nos.1 & 2 fail to do so and adhere to their stand that they are not required to release the said documents, the Reserve Bank of India shall proceed as directed above.

13. The petition is disposed of with the aforesaid directions. The pending application is also disposed of.

14. Order *dasti* under signature of the Court Master.

VIBHU BAKHRU, J

JULY 09, 2018/MK