

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11225 of 2019

=====

Renu Sinha Wife of Devendra Singh Resident of Rehmat Ganj, P.O. and P.S.-
Masaurhi, in the district of Patna.

... .. Petitioner

Versus

1. The Indian Overseas Bank A Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its central office at 763, Annasalai, Chennai, Pin Code- 600002.
2. The Chief Manager Indian Overseas Bank, Kankarbagh Branch, P.O.- Lohiya Nagar, P.S.- Kankarbagh, District and town at Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Subhash Prasad Singh, Advocate Mrs. Kiran Kumari, Advocate
For the Respondent/s	:	Mr.Sanjay Singh Thakur, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 16-07-2019 Heard learned counsel for the petitioner and learned
counsel representing the Bank.

This writ application has been filed for the following
reliefs:

“(i) Issue no dues certificate and after
cancelling return the registered Mortgage Deed
No. 3702 dated 14.03.2009 which was
executed before the registering authority at
Patna.

(ii) Issue consequential relief with a direction
to the respondents to execute the Deed of
Convenience with the petitioner while
cancelling the registered Mortgage Deed No.
3702 dated 14.03.2019.

(iii) Return the entire loan documents, which
was executed at the time of disbursement and



sanction of cash credit loan to the petitioner on 14.03.2009.

(iv) Issue others appropriate relief by way of order/orders, direction/directions as the entire case credit loan amount has been liquidated after deposit of entire loan amount along with interest as contained the recital portion of the loan account, Annexure-1 bearing Cash Credit Loan Account No. 165902000000088.”

In the writ application the petitioner has set up a case giving an impression to this Court that the Bank is not releasing the Title Deed /Mortgage Deed of the property in question despite complete liquidation of the loan account and statement of loan account which was a Cash Credit Account of a firm in which the petitioner had joined with her husband.

Now a counter affidavit has been filed on behalf of the Bank. With the counter affidavit the Bank has brought on record a zerox copy of the deed of simple mortgage which was executed by and on behalf of the M/s Pintu Construction by the husband of the petitioner, the petitioner herself and her sons. It is a registered deed. Recitals made therein states in one of the paragraphs that this property came in exclusive possession of Sri Devendra Singh (husband of the petitioner) as a legal heir and successor of his father Ram Lakhan Singh. The Bank has come out with a case that no doubt the loan in question for which the simple mortgage deed



was executed has been liquidated but at the same time since the husband of the petitioner having obtained financial assistance from the Bank in respect of the business which he was running in the name and style of M/s Satyam Engineering failed to re-pay the loan, the Bank had initiated a proceeding under Section 19 of the Recovery of Debts & Bankruptcy Act, 1993 giving rise to O.A. No. 675 of 2017.

Learned counsel has brought on record the certificate of recovery dated 03.08.2018 passed in said O. A. No. 675 of 2017 against the husband of the petitioner by which the Bank has been granted a certificate to recover a sum of Rs. 52,97,253/- together with pendente lite and future interest at the rate of 10 % per annum simple from 01.02.2017. It is stated that a recovery proceeding for execution of the said certificate is going on before the Recovery officer, Debts Recovery Tribunal, Patna. At this stage, learned counsel for the respondent Bank has also pointed out that earlier the husband of the petitioner had moved this Court as a partner of M/s Pintu Construction for the same relief giving rise to C.W.J.C. No. 6540 of 2018 which was heard and disposed of vide order dated 17.09.2018 by a learned co-ordinate Bench of this Court giving liberty to the husband of the petitioner to file a representation and direction to the respondent no. 2 to dispose of the same within four weeks. Annexure '3/R' of the counter



affidavit filed on behalf of the Bank is the communication of the respondent no. 2 to the husband of the petitioner.

Learned counsel submits that in the given facts and circumstances of the case, what the husband of the petitioner could not achieve by filing the writ application earlier before this Court, the same cannot be obtained by this petitioner by filing another writ application. It is further submitted that once the petitioner has signed the mortgage deed stating and declaring that it is an exclusive property of her husband as a successor and heir of his father, this petitioner has no legal right to maintain this writ application seeking return of the document and no dues certificate.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that so far as the return of mortgage deed of the property in question is concerned, it cannot be directed as it is apparent on the face of the record that the property is said to be that of her husband as per recitals in the mortgage deed and her husband is now a certificate debtor in O.A. No. 675 of 2017. A recovery proceeding against him is going on and therefore, the Bank has been exercising its right to recover the dues in accordance with law. Learned counsel for the Bank, however, submits that so far as no dues certificate with respect to this Account of M/s Pintu Construction is concerned, that may be issued by the Bank.



This Court directs for issuance of no dues certificate with regard to the Account of the M/s Pintu Construction by the Bank within a period of four weeks from today.

This Court, in the given facts and circumstances of the case, is not willing to exercise its extra-ordinary writ jurisdiction and discretionary power to direct the Bank to return the Mortgage Deed finding that the Bank has been able to substantiate its submission that it has a right to recover the dues from the assets of the husband of the petitioner. This would, however, not to be taken as any adjudication of the issue with regard to the nature of the property and rights of the parties or any other family members with respect to the said property as it will be open to them to take all such pleas which may be available to them in case the property in question will be dealt in the recovery proceeding.

This writ application stands disposed of.

(Rajeev Ranjan Prasad, J)

avin/-

U			
---	--	--	--

