HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 328 of 2015

Nand Kumar Adil S/o Late Shri Ravi Das Adil Aged About 46 Years Resident Of Grahmin Godam, Village Hathbandh, Tehsil Simga, District Baloda Bazar **(CG)** **---- Petitioner**

Versus

State Bank of India, A Nationalized Bank having its Central Office at State Bhawan, Madame Cama Road, Bakbay Reclamation, Nariman Point, Mumbai Amongst Other Branches a branch at Neora, Tahsil Tilda, District Raipur through its Branch Manager

--- Respondent

For petitioner – Shri B.P. Sharma, Advocate.
For respondent- Shri S.S. Rajput, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

28/08/2019

Heard.

1. Instant petition is filed for the following reliefs:-

"(a) A writ and/or an order in the nature of writ of appropriate nature do issue of directing the respondent bank authorities to produce before this Hon'ble Court relevant records pertaining to the case of the petitioner for its kind perusal.

(b) A writ and/or an order in the nature of writ of appropriate nature do issue directing the respondent bank authorities to return the title documents deposited in respect of loan account No.11301881269 i.e. title documents in respect of property bearing khasra No.276/6 area 0.405 hectare situate at village Hathbandh and khasra No.2 situated at village Kukrachunda, District Baloda Bazar (CG)

(c) A writ and/or an order in the nature of writ of appropriate nature do issue directing initiation of appropriate action including initiation of criminal prosecution for unlawful retention of the property document of scheduled caste person amounting to harassment in the eyes of law and for payment of appropriate damages as this

Hon'ble Court may deem fit.

(d) Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of case.

(e) Cost of the petition may also be awarded."

2. It is the case of the petitioner that the petitioner has availed the different loan limits from the respondent/bank and to secure the same the mortgage in respect of the immovable property was created. It is stated that despite the entire amount was paid in respect of the loan for which the property was mortgaged the bank has refused to return the original papers of the mortgaged property. It is stated that the original application before the Debt Recovery Tribunal was filed by the bank wherein the decree was passed wherein settlement was arrived at and even after settlement of the amount the execution was withdrawn and the amount was paid but the original mortgaged property papers were not returned. Therefore they may be directed to return the original mortgaged property paper.

3. Per contra, learned counsel for the respondent/bank would submit that the petitioner has availed as many as different loan more than in 16 numbers and different accounts were opened. In respect of the State Bank of India Nevra Branch 16 civil suits for recovery of the amount were filed against the petitioner which were decreed in between the period from 2014 to 2015. It is stated that another loan was obtained from Hirmi branch of the respondent/bank. For default of payment of such loan original application was filed before the Debt Recovery Tribunal for recovery of amount of Rs.1,35,47,131.23 wherein the Debt Recovery Tribunal vide its order on 6/02/2014 restrained the respondent i.e. the petitioner to dispose of, transferring or alienating the mortgaged property. It is stated that therefore the bank has all the right to exercise the right of general lien for recovery of the amount and even if it is the case of the

petitioner that in respect of the mortgaged property amount has been paid then the recourse would be under Section 60 of the Transfer of Property Act. For redemption of the mortgaged property, petition would not lie.

4. Perused the documents.

5. Perusal of the reply would show that as many as 16 cases were filed against the petitioner and decree of Rs.7,50,000/- each besides interest and the cost of the suit was decreed. The particular of the civil suit as has been reflected in the reply is reproduced hereunder:-

Sl. No.	Civil Suit No.	Decree amount	Decree date
1.	3B/12	Rs.7,50,000/- with 10% interest & cost	12/01/15
2.	4B/12	Rs.7,50,000/- with 10% interest & cost	31/10/14
3.	5B/12	Rs.7,50,000/- with 10% interest & cost	30/10/14
4.	6B/12	Rs.7,50,000/- with 10% interest & cost	31/10/14
5.	7B/12	Rs.7,50,000/- with 10% interest & cost	20/11/14
6.	8B/12	Rs.7,50,000/- with 10% interest & cost	18/11/14
7.	10B/12	Rs.7,50,000/- with 10% interest & cost	20/11/14
8.	11B/12	Rs.7,50,000/- with 10% interest & cost	20/11/14
9.	12B/12	Rs.7,50,000/- with 10% interest & cost	20/11/14
10.	13B/12	Rs.7,50,000/- with 10% interest & cost	18/11/14
11.	14B/12	Rs.7,50,000/- with 10% interest & cost	30/10/14
12.	15B/12	Rs.7,50,000/- with 10% interest & cost	31/10/14
13.	16B/12	Rs.7,50,000/- with 10% interest & cost	18/11/14
14.	17B/12	Rs.7,50,000/- with 10% interest & cost	30/10/14
15.	18B/12	Rs.7,50,000/- with 10% interest & cost	30/10/14
16.	9B/12	this suit is still pending in the court	

6. The copy of the decree has been filed as Annexure R-1 collectively

in respect of the 15 suits which was decreed. The document filed as Annexure R-2 would show that the original application before the Debt Recovery Tribunal, Jabalpur was filed against Jai Ram Foods which the petitioner claims to be of his own. The said application was filed for recovery of Rs.1,35,47,131.23. Consequently, if the petitioner's request to return the mortgaged property paper is acceded to, then in such case the bank as a public institution may lose its valuable right for recovery by attachment and sale of such property.

7. The section 60 of the Transfer of Property Act, 1882 gives a right of the mortgagor to redeem the mortgage.

For the sake of brevity Section 60 is reproduced hereunder:-

"60. Right of mortgagor to redeem.-At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver [to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by [decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.-Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."

8. The facts therefore would suggest that the petitioner has suffered various decree from the bank and during the course of argument it is submitted that as per the instruction the original application which was filed before the Debt Recovery Tribunal for recovery of Rs.1,35,47,131.23 has also been decreed. With respect to the claiming back the property the petitioner can very well avail the right to redeem the mortgaged property and considering the number of decree passed against the petitioner whether such right of redemption can be allowed or not is a question to be adjudicated as against right of the bank to recover the amount by attachment and sale of immovable property of petitioner loanee. The issue involved in this case cannot be gone into by this petition under Article 226 of the Constitution of India as it would attract the leading of the evidence of the parties and disputed question of fact are to be decided. This court in the background of the facts cannot accede to the request of the petitioner and order for return of the mortgaged property paper as it may eventually defeat the right of the bank to recover the amount. The petition is not bonafide.

9. Consequently, I am not inclined to allow this petition and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

gouri