IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.13131/2019

B.Rajkumar ... Petitioner

Versus

The Manager,
Indian Bank,
Ethiraj Salai Branch,
Chennai - 600105. ... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondent to accept the enhanced one time settlement letter dated 17.07.2018 for the properties comprised in S.No.59/8, 57/5, 59/10A, 59/10B, 58/6A2. 58/6A3, 58/7 altogether having extent of Acre 3.98 cents situated at Aladu Village, Ponneri Taluk, and release the mortgage/issue clearance certificate.

For Petitioner : Mr.S.Kumaresan

For Respondent : Mr.S.Praveen Kumar

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

(1) The respondent Bank had initiated recovery proceedings against M/s.Balaji Enterprises, a Proprietary Concern as well as against the guarantors in O.A.No.795/1998 filed under Section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993, [in short RDDB], on the file of the Debts Recovery Tribunal - 1 at Chennai [in short DRT].

(2) The DRT-1, Chennai, vide order dated 18.07.2016, has ordered that the Bank is entitled for Recovery Certificate against the defendants 1 to 10, jointly and severally for a total sum of Rs.1,27,99,203/- (Clean Loan I - Rs.40,71,935/-, Clean Loan II

- Rs.31,31,189/- and OCC facility - Rs.55,97,079/-) together with future interest thereon at the rate of 9% p.a. (simple) from the date of application till the date of payment in full, with costs and the allied reliefs.

(3) It appears that the petitioner, without due diligence and verifying the encumbrance, had purchased loans, which are the subject matter of mortgage with the respondent Bank from R.Mahalingam, Tmt.Kuppammal and Tmt.Rossammal - respondents 2, 4 and 6 respectively in the said original application, through six registered Sale Deeds bearing Document Nos.8086/2006, 8108/2006, 6381/2017, 6383/2007, 2508/2008 and 6382/2017.

(4) The petitioner, to his shock and surprise, became aware of the fact that some of the lands purchased by him in Survey Nos.59/8, 57/5, 59/10A, 59/10B, 58/6A2, 58/6A3 and 58/7 admeasuring to a extent of about 3.98 acres, were given as collateral security in favour of the said Bank and he was not at all aware of the said mortgage.

(5) The petitioner, in this regard, also submitted an One Time Proposal and since it was not property considered, came forward to file this writ petition praying for an issuance of a writ of Mandamus directing the respondent's Bank to accept the One Time Settlement of Rs.40,00,000/- made by the petitioner vide letter dated 17.07.2018 in respect of the properties covered in O.A.No.11/795/1998 on the file of the DRT-I, Chennai comprised in S.Nos.59/8, 57/5, 59/10A, 59/10B, 58/6A2, 58/6A3, 58/7, admeasuring an extent of 3.98 acres situated at Aladu Village, Ponneri Taluk, and release the relevant Deeds.

(6) The writ petition was listed for hearing on 30.04.2019 and thereafter, the matter has been adjourned nearly 12 times. When the matter was called on 18.11.2019, it was represented that One Time Settlement proposal is under consideration by the respondent Bank and therefore, the matter was adjourned by two weeks and it was also indicated that if no settlement is arrived at, the respective learned counsels appearing for the parties must be ready to argue the case on the next date of hearing.

(7) When the matter is listed today, the learned counsel appearing for the petitioner would submit that in the light of the present economic condition, even if properties which are subject matter of mortgage and sold to the petitioner, are auctioned, there cannot be any bidders and therefore, a prudence requires that the Bank may consider the One Time Settlement proposal mooted by the petitioner and also drawn attention of this Court to the counter affidavit of the respondent dated 19.07.2019.

(8) Per contra, the learned Standing Counsel appearing for the respondent Bank would submit that despite obtaining an order in O.A.No.11/795/1998 on the file of the DRT-I, Chennai, the Bank is yet to see the colour of the coin and the petitioner is also

not heeding to the advice given by the respondent Bank with regard to his request for One Time Proposal and prays for dismissal of the writ petition.

(9) This Court paid its best attention to the rival submissions and also perused the materials placed before it.

(10) The petitioner on an earlier occasion approached this Court by filing W.P.No.2594 of 2017 praying for issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the order dated 10.01.2017 in I.A.No.61 of 2017 in A.I.R.No.376 of 2016 passed by the DRAT, Chennai and to quash the same and consequently directing the DRAT to entertain the petitioner's appeal, without any condition for deposit of amount.

(11) This Court, while dealing with the arguments advanced by the respective learned counsels appearing for the parties, had also taken into consideration of the fact that lack of due diligence on the part of the petitioner and following observation has been made in paragraph 6. It is relevant to extract the same.

> 6."There is no dispute that the properties were mortgaged to the bank. The Power of Attorney has sold the property to the petitioner. Ordinary prudence and care would impel a purchaser to undertake an inquiry which would have disclosed the charge, which the petitioner has not done so. Admittedly, there is a charge on the property and till the debt is discharged, the property remains to be subject to the charge. Under the circumstances, the extent of the amount claimed shall be discharged as per the charge on the property and for the remaining, the petitioner is entitled to claim in accordance with law. Of course, the petitioner is at liberty to proceed against his vendors."

(12) The writ petition was disposed of accordingly, in the light of the above said observation, vide order dated 01.03.2017. The petitioner in real technical sense wants to review the said order under the guise of filing a fresh writ petition.

(13) It is a well settled legal position that this Court cannot issue a positive mandamus directing the bank to accept the One Time Settlement proposal and the petitioner prays for a larger relief to accept the One Time Settlement proposal suited to him. This Court cannot issue any positive direction in this regard.

(14) It also prima facie appears that the petitioner, without even properly looking into the parent Title Deeds, which are in the custody of the bank by way of equitable mortgage, is said to have purchased the properties and started claiming that he is an innocent purchaser for a valuable consideration, without noticing the encumbrance. The said stand prima facie appears to be untenable.

(15) This Court, after careful analysis of the facts and circumstances and the arguments advanced by the learned counsels, is of the considered view that there is no merit in this writ petition.

(16) In the result, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Manager,
Indian Bank,
Ethiraj Salai Branch,
Chennai - 600105.

+1cc to Mr.S.Kumaresan, Advocate Sr.101373
+1cc to Mr.S.Praveen Kumar, Advocate Sr.101415

WP.No.13131 of 2019

ssi[co]
srg 29/01/2020