THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.27012 OF 2018

ORDER: (per SK,J)

The petitioner assails the action of the Oriental Bank of Commerce, Hyderabad, the first respondent, in not returning the original title deeds along with link documents pertaining to the property situated at H.No.8-2-293/A/237, Plot No.237, admeasuring 604.30 square yards in Survey No.403/1 (old), Survey No.120 (New) of Shaikpet Village, Jubilee Hills, Hyderabad. These documents were furnished by the petitioner to the first respondent bank by way of an equitable mortgage as a personal guarantor for the loan availed by the second respondent company.

It is the case of the petitioner that her personal guarantee is no longer subsisting and therefore, the first respondent bank has no authority in law to proceed against her property. She filed S.A.No.170 of 2018 before the Debts Recovery Tribunal-II, Hyderabad, seeking a declaration to this effect and to protect her property. In the said S.A., an order was passed by the Tribunal on 17.05.2018. Therein, the Tribunal took note of the offer made by the petitioner that she would redeem the mortgage on her property by paying Rs.8.00 crore and the concession made by the learned counsel appearing for the first respondent bank that the bank had no objection to release the petitioner's property upon her deposit of the said amount. The Tribunal accordingly directed payment of the sum of Rs.8.00 crore by the petitioner within a timeframe. In the event of default, the Tribunal granted liberty to the first respondent bank to proceed with the auction of the petitioner's property.

It appears that the first respondent bank thereafter issued letter dated 29.05.2018 to the petitioner whereby it informed her that if two working days notice was given about the date of deposit of the amount of Rs.8.00 crore, her property documents would be kept ready to be handed over to her. This letter was titled 'without prejudice'.

Ms.Rubaina S.Khatoon, learned counsel for the petitioner, would therefore assert that the first respondent bank committed itself to returning the title documents pertaining to the petitioner's property upon her deposit of Rs.8.00 crore and it is not open to it to now retract from the same.

Per contra, Sri Maruthi Jadhav, learned counsel representing Pearl Law Associates, learned counsel for the first respondent bank, would point out that the main issue in S.A.No.170 of 2018 filed by the petitioner is as to whether the guarantee offered by her is still subsisting and without a decision on that issue, it would not be open to the petitioner to seek return of the title documents of the only property offered by her as security.

Though we are not impressed with the conduct of the first respondent bank inasmuch as the letter dated 29.05.2018 embodies a commitment on its part to return the property documents upon payment of the amount by the petitioner, we are conscious of the fact that public monies would be involved in this exercise and when the securitisation application filed by the petitioner is yet to be decided, it would be premature at this point of time to direct the first respondent bank to return the documents only on the ground that the petitioner has deposited the sum of Rs.8.00 crore.

We are informed that the first respondent bank has already taken possession of the petitioner's property and is now appropriating the lease rental amounts received therefrom to the credit of the loan account.

Given the above facts, we are of the opinion that the interest of justice would be sufficiently served by directing the first respondent bank not to take any steps for sale of the petitioner's property pending the adjudication of S.A.No.170 of 2018 filed by her. The lease rental amounts and the amount of Rs.8.00 crore deposited by the petitioner would abide by the result of the said securitisation application. In the event the petitioner succeeds in the securitisation application, the first respondent bank would have no manner of right to appropriate the aforestated sums and would be legally bound to return the same. However, if the securitisation application is dismissed, the first respondent bank would be at liberty not only to appropriate the aforestated amounts to the credit of the loan account but also initiate measures against the petitioner's property if any loan dues are still outstanding. The Debts Recovery Tribunal-II, Hyderabad, shall dispose of S.A.No.170 of 2018 expeditiously, keeping in mind the mandate of Section 17(5) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The writ petition is disposed of with the above directions. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:09.07.2019
GJ