IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.01.2020
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.22732 of 2017

Shyamala Devi ... Petitioner
Vs

1. The Regional Manager,
Regional Office,
State Bank of India,
Region - IV,
Kurinji Complex,
State Bank Road,
Coimbatore - 641 018.

2. The Branch Manager,
State Bank of India,
V.Kallipalayam Branch,
Palladam Taluk,
Tiruppur District. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the second respondent Bank to release the Petitioner's title deed deposited as a security to avail both the Crop loan in A/c. No.31231740259 and the Housing term loan in A/c. No.11420743549 from the second respondent Bank, as requested through the petitioner's representation dated 16.08.2016.

For petitioner : Mr.P.M.Duraiswamy
For respondents : Ms.S.R. Sumathy for R2
R1-Served - No appearance

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the second respondent Bank to release the Petitioner's title deeds deposited as a security to avail both the Crop loan in A/c. No.31231740259 and the Housing term loan in A/c. No.11420743549 from the second respondent Bank, as requested by the petitioner in her representation dated 16.08.2016.

2. It is the case of the petitioner that she availed Crop loan in A/c. No.31231740259 and Housing term loan in

A/c. No.11420743549 from the second respondent Bank by pledging her title deeds pertaining to her agricultural lands as a security to avail both the aforesaid loans. According to the petitioner, her husband stood as a Guarantor for availing both the crop loan and the Housing term loan.

3. According to the petitioner, the second respondent agreed to receive Rs.4,80,000/- from the petitioner towards full and final settlement of the crop loan as well as the Housing term loan. According to the petitioner in terms of the settlement offer made by the second respondent Bank, she has also paid the sum of Rs.4,80,000/- to the second respondent Bank and closed the aforesaid loan accounts. It is the case of the petitioner that the second respondent Bank expressed their inability to release the security documents dated 06.10.2015, which were given for availing the crop loan and the Housing term loan on the ground that the petitioner's husband has availed a car loan, where he was a defaulter and has not discharged the loan. Since the second respondent Bank failed to return the original title deeds to the petitioner, despite closing of the crop loan and the housing term loan, the petitioner has filed this writ petition seeking for a Mandamus for return of title deeds.

4. A counter affidavit has been filed by the second respondent wherein, they have stated that they have got the power to exercise a general lien under Section 171 of the Contract Act. According to them, exercising the power of general lien, they have not returned the original title deeds to the petitioner for non-repayment of the car loan by the petitioner's husband. However, they have admitted in the counter affidavit that the petitioner has discharged the Crop loan as well as the Housing loan, which she has availed from the second respondent Bank by paying a sum of Rs.4,80,000/- towards full and final settlement of both the loans.

5. Heard Mr.P.M.Duraiswamy, learned counsel for the petitioner and Ms.S.R. Sumathy, learned counsel for the second respondent.

6. The learned counsel for the petitioner submitted that general lien cannot be exercised by the Bank under Section 171 of the Contract Act, 1872 for non repayment of a loan by a third party, who may be the petitioner's husband. According to him, the exercise of general lien under Section 171 of the Contract Act is permissible only in respect of the loans in which the petitioner either

stood as a borrower or a guarantor. The learned counsel for the petitioner also drew the attention of this Court to a single bench judgment of the Kerala High Court in the case of Lonankutty Antony @ T.L.Antony versus The Joint Registrar of Co-operative Societies and others reported in CDJ 2016 Ker HC 404, wherein in an identical matter, the Kerala High Court has held that Section 171 of the Contract Act cannot be applied against the wife as the husband who has availed a separate loan in which the wife was either a co-borrower or a guarantor. He also pointed out that the Kerala High Court in the same judgment has held that unless a person is a party to the loan transaction in whichever capacity, the question of the Bank's exercising the general lien vis-a-vis the property of that person, even if he or she were the spouse of the contracting party does not arise. Therefore, the learned counsel for the petitioner submits that the respondents do not have any authority under law to exercise general lien under Section 171 of the Contract Act against the petitioner in respect of the non repayment of the Car loan availed by her husband, in which the petitioner is not a party to the said loan transaction.

7. However, the learned counsel for the respondents would vehemently contend that Section 171 of the Contract Act is very much applicable and the Bank has rightly exercised the general lien. According to her, till date, the car loan has not been discharged by the petitioner's husband and hence, they have rightly exercised the general lien.

Discussion :

Section 171 of the Contract Act reads as follows :

> 171. General lien of bankers, factors, wharfingers, attorneys and policy brokers - Bankers, factors, wharfingers, attorneys of a High court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them, but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

8. As seen from the Section 171 of the Contract Act, it does not empower the Bank to exercise general lien against third parties who are not parties to the loan transaction. Admittedly, in the instant case, the car loan was availed by the petitioner's husband and the petitioner was not a party to the said loan transaction as she was neither a co-borrower nor a guarantor for the car loan availed by the petitioner's husband. This being the case the respondents

do not have the authority under law to exercise general lien as contemplated under Section 171 of the contract Act, 1872. Having paid the entire dues under the crop loan and the housing loan based on the demand made by the respondents Bank, the petitioner is entitled for return of the title deeds, which she had pledged while availing crop loan and the Housing term loan from the second respondent Bank. As rightly held by the Kerala High Court in the decision relied upon by the learned counsel for the petitioner, unless a person is a party to a loan transaction in whichever capacity, question of the Bank exercising general lien under Section 171 of the Contract Act vis-a-vis the property of that person, even if he or she were the spouse of the contracting party does not arise. The aforesaid decision of the Kerala High Court is squarely applicable to the facts of the instant case.

9. For the foregoing reasons, this Court directs the second respondent Bank to release the petitioner's title deeds deposited as a security while availing the Crop loan in A/c. No.31231740259 and the Housing term loan in A/c. No.11420743549 which have been subsequently fully settled within a period of four weeks from the date of receipt of a copy of this order

10.With the aforesaid direction, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi2
To
1. The Regional Manager,
Regional Office,
State Bank of India,
Region - IV,
Kurinji Complex,
State Bank Road,Coimbatore - 641 018.

2. The Branch Manager,
State Bank of India,
V.Kallipalayam Branch,
Palladam Taluk,Tiruppur District.
+1cc to Mr.P.M.Duraiswamy , Advocate SR.No. 569
+1cc to Mr.S.R.Sumathy , Advocate SR.No. 1244

W.P. No.22732 of 2017

A.SK(08/01/2020)