3 **30.11.2022**

gd/ssd

MAT 1811 OF 2022
IA NO: CAN/1/2022
THE PUNJAB NATIONAL BANK AND ORS.
VS
SMT. PIYALI DE AND ANR.

Mr. Abhishek Banerjee,
Ms. Parna Roy Choudhury (Banerjee)
..for the Appellants

Mr. Prantick Ghosh,
Mr. Prasad Bhattacharyya
..for the Respondent No.1.

Mr. Manas Kumar Das
..for the Respondent No.2.

This intra court appeal is at the instance of the bank challenging the order of the learned Single Judge dated 14th November, 2022 whereby WPA 20556 of 2022 filed by the respondent no.1 herein (writ petitioner) has been allowed with a direction to the writ petitioner to pay the outstanding amount along with interest and further direction to the appellants Bank to return the title deeds to the writ petitioner on payment of such amount.

The writ petitioner had approached the writ court with the plea that her mother, Archana Saha and brother, Nirmalya Saha had obtained the loan facility from the appellant no.1/Bank in Account No.1408300025531 and mortgaged certain properties as secured assets. A plea was raised by the writ petitioner that she was the married daughter of

Archana Saha who had passed away on 18.11.2019. Further plea was raised on the death of Archana Saha her heirs were the writ petitioner, Nirmalya Saha and Niranjan Chandra Saha (husband of deceased) and that in the year 2022 Niranjan Chandra Saha had also passed away, therefore, the writ petitioner and the co-borrower Nirmalya Saha i.e. respondent no.2 were the only legal heirs. Therefore, the writ petitioner had first represented to the bank to close the account and hand over the title deeds and thereafter had approached the writ court with the similar relief.

Learned Single Judge by a short order, without going into the merits of the controversy has disposed of the writ petition by directing the writ petitioner to pay the outstanding amount and further directing the appellant bank to return the title deeds.

Contention of learned counsel for the appellants is that the borrower, namely, Nirmalya Saha had as many as four accounts and all the accounts were declared as NPA not only individually but also by virtue of Clause 2.2.2 of the Master Circular issued by the RBI dated 1st July, 2008. Further submission is that the writ petitioner is not the borrower and she had not created the mortgage, therefore, she is not entitled for release of the title deeds. Learned counsel for the appellants has also referred to the letter of lien dated 19.01.2017 signed by the borrowers and had submitted that a general lien was created in favour of Bank, therefore, if the other accounts had become NPA, then merely clearing the balance amount in one account will not make the writ petitioner entitled for release of the title deeds. In this regard, he has also placed reliance Section 171 of the Contract Act relating to the general lien of the banker. He has also submitted that the petition has been disposed of on the first day itself by the learned Single Judge without giving opportunity to file affidavit-in-opposition.

Learned counsel for the writ petitioner has submitted that the appellants have accepted the amount in terms of the order of the learned Single Judge, therefore, the appellants are estopped from challenging the said order. He has also submitted that the title deeds were mortgaged only against the loan amount of one account, therefore, on clearing the balance amount in the said loan account, writ petitioner is entitled to release the title deeds.

Having heard the learned counsel for the parties and on perusal of the record, we find that none of the issues, which have been raised by learned counsel for the appellants before this Court, have been gone into by the learned Single Judge. As no affidavits were called by the learned Single Judge and writ petition was disposed of on the first day itself, therefore, appellants had no opportunity to raise these issues before the learned Single Judge and placed on record the fact that there were as many as four loan accounts which were declared NPA. It is also noticed that writ petitioner is not a borrower but she is claiming herself to be the legal heir along with the respondent no.2 with the plea that there exists no other legal heir of the deceased borrower but no succession certificate or any other document in this regard has been placed on record. A number of judgments have been relied upon by the learned counsel for the appellants in respect of the general lien of the banker. All these judgments along with the legal position needs to be considered. Contrary plea of the writ petitioner that the principle of general lien of the banker will not apply also need to be gone into. As the learned Single Judge has not gone into the merits of the matter, we refrain ourselves to enter into the same at this stage as the decision on these issues for the first time by this Court will result into loss of forum. The principle of estoppel will not be attracted against the Bank because the bank was otherwise entitled to receive the amount, which has been paid by the writ petitioner in pursuant to the order of learned Single Judge.

In the aforesaid circumstances, we set aside the order of the learned Single Judge and remit the matter back to the learned Single Judge for fresh decision on merit in accordance with law after giving the appellants an opportunity to file the affidavit-in-opposition and thereafter an opportunity to the respondent nos.1 and 2 herein to file affidavit-in-reply, if required.

Having regard to the nature of controversy involved in the matter, we expect that the pending writ petition will be decided expeditiously.

We make it clear that it will be open to the parties to raise all legally permissible issues before the learned Single Judge.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Ananya Bandyopadhyay, J.)

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