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W.A.No.343 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.343 of 2022

1 State Bank of India  
Rep. by its Deputy General Manager  
Stressed Assets Management Branch 1112  
Raja Plaza, Avinashi Road  
Coimbatore – 641037.

2 The Assistant General Manager  
and CLO-III, State Bank of India  
Stressed Assets Management Branch 1112  
Raja Plaza, Avinashi Road  
Coimbatore – 641037.

.. Appellants

Vs

1 Thilagavathi Traders  
A Registered Partnership Firm  
Rep. by its Managing Partner, P.K.Pounraj  
No.69, Adhiyaman Bye-pass Road  
Dharmapuri.

2 Reserve Bank of India  
16, Rajaji Salai, Fort St. Glacis  
Chennai – 600001.

.. Respondents



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Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 1.12.2021 passed in W.P.No.10970 of 2019.

For the Appellants : Mr.M.L.Ganesh

For the Respondents : Mr.K.Raju  
for M/s.Tatva Legal Chennai  
for 1<sup>st</sup> respondent

### JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

This writ appeal has been directed against the impugned order dated 1.12.2021 passed in W.P.No.10970 of 2019, by which the prayer of the writ petitioner/first respondent herein to direct the first appellant herein to return the original documents of title relating to the property, being the vacant commercial site measuring 15511.71 sq.ft. at S.Nos.261 and 262 in Vellegoudampalayam Village, Dharmapuri Taluk, was allowed.

2. Learned counsel appearing for the appellants assailing the impugned order argued that the writ petitioner/first respondent herein had approached the Agri Commercial Branch of State Bank of India and availed credit facilities by way of overdraft to the tune of Rs.5



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crores in the year 2014 by mortgaging its property, being the vacant commercial site measuring 15511.71 sq.ft. at S.Nos.261 and 262 in Vellegoudampalayam Village, Dharmapuri Taluk, to the first appellant/bank as security. The aforesaid property was shown as additional security for the loan obtained by PKB Feed Mills Private Limited and, therefore, the original documents of title relating to the aforesaid property ought not to have been directed to be returned to the first respondent, as the appellant/bank will not have any security to recover the huge amount of Rs.293.01 crores due and payable by the first respondent and its group concerns as on 31.12.2021.

3. It is further submitted by learned counsel for the appellants that even in the letter dated 16.8.2017 issued by the first appellant/bank to PKP Feed Mills Private Limited it has been categorically stated that the after payment of the entire amount under one-time settlement, the release of any secured property can be sought only upon payment of 125% of the assessed marked value of the property concerned, but this vital aspect has been overlooked by the learned Single Judge.



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4. The next submission of learned counsel for the appellants is that the learned Single Judge ought to have considered the crucial fact that the first respondent had promoted four companies, namely, PKP Feed Mills Private Limited; PKP Spintex Mills Private Limited; Sathya Granites; and, PKP Minerals Private Limited and extended equitable mortgage in terms of Section 58(f) of the Transfer of Property Act for the aforesaid companies and, therefore, even if the letter dated 16.8.2017 with regard to one-time settlement was issued in favour of the first respondent, the same cannot be acted upon as other group companies failed to discharge their respective loan liabilities. In other words, it is the submission of learned counsel for the appellants that the letter dated 16.8.2017 issued by the first appellant/bank to the first respondent should not be read in isolation, but in conjunction with other OTS letters given to the group companies.

5. In reply, supporting the impugned order, learned counsel appearing for the first respondent submitted that the first respondent, being the borrower, honoured the one-time settlement offered by the first appellant/bank and paid the entire amount, which has been duly



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acknowledged by the appellant bank by issuing a "No Due Certificate" dated 15.10.2018 and, therefore, the first appellant/bank cannot plead that the first respondent is not entitled to get back the original documents of title.

6. We find merit in the aforesaid submission made by learned counsel for the first respondent inasmuch as the appellant/bank has issued a No Due Certificate on 15.10.2018, which reads as under:

*"This is to certify that the credit facilities sanctioned to M/s.Thilagavathi Traders by State Bank of India has been settled under compromise by payment of Rs.5.25 crs (being compromise amount). Hence, there are no dues payable by the Borrower/ Guarantors in respect of the loans sanctioned by the Bank to M/s.Thilagavathi Traders."*

The above certificate clearly shows that there are no dues payable by the borrower/guarantors in respect of the loans sanctioned by the Bank to M/s.Thilagavathi Traders. If the property, being the vacant commercial site measuring 15511.71 sq.ft. at S.Nos.261 and 262 in Vellegoudampalayam Village, Dharmapuri Taluk, was offered as additional security for the loan obtained by PKB Feed Mills Private



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Limited, the No Due Certificate ought to have clearly mentioned that as long as the loan amount in respect of PKB Feed Mills Private Limited is not realized, the first respondent would not be entitled to receive the original documents of title in respect of the property. The non-mentioning of such clause in the No Due Certificate shows that the mortgage was created by the borrower only for M/s.Thilagavathi Traders, nor for M/s.PKB Feed Mills Private Limited.

7. In support of the submission that the first respondent has offered the property in question as additional security for the loan availed by PKP Feed Mills Private Limited, learned counsel for the appellants relied on the Consent Letter for Continuation of Deposit dated 13.7.2014 and the Agreement to Create Equitable Mortgage. The aforesaid documents only show that it is only an undertaking given by the first respondent to create an equitable mortgage within a period of 14 days upon receipt of a written request from the appellant bank. But, from the records, it is seen that no such written request was ever issued by the appellant bank demanding the first respondent to execute the mortgage deed, nor any document has been produced to depict that the agreement was acted upon. Thus, it is



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conspicuously clear that no equitable mortgage deed has been registered as required under Section 17(1)(i) of the Registration Act, for, the said provision mandates that instruments evidencing an agreement relating to deposit of title deeds must be registered. In this context, it is apposite to extract below Section 17(1)(i) of the Registration Act, 1908, which was brought by the Registration (Tamil Nadu Amendment) Act, 2012.

**17. Documents of which registration is compulsory. --** (1) *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866 (XX of 1866), or the Indian Registration Act, 1871 (VIII of 1871), or the Indian Registration Act, 1877 (III of 1877), or this Act came or comes into force, namely:--*

(a) *instruments of gift of immovable property;*

(b)-----

(c) -----

(i) **instruments evidencing an agreement relating to the deposit of title deeds;**

A bare reading of the above said provision makes it abundantly clear that instruments evidencing an agreement relating to the deposit of



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title deeds should be necessarily registered. However, in the case on hand, the Agreement to Create Equitable Mortgage produced by the appellant/bank is not registered and, therefore, it cannot be considered as a valid instrument creating charge in favour of the appellants. Moreover, in the case on hand, since the mortgage was created by the borrower for a specific loan in respect of M/s.Thilagavathi Traders, in our considered view, the Bank cannot exercise lien for different loan for which the borrower had not deposited his Title Deeds.

8. In ***State Bank of India, Kothagiri Branch, Nilgiris and another Vs. Jayanthi and others [2011 (2) CTC 465]***, a Division Bench of this Court, while dealing with a similar issue, held that if a mortgage is created by the deceased borrower for specific purpose and for specific loan, the Bank cannot exercise lien in respect of different loan account for which borrower had not deposited his Title Deeds. Therefore, in the case on hand, since the document in question was deposited only in respect of loan for M/s.Thilagavathi Traders, the contention of the bank that they would retain the subject document in respect of the different loan pertaining to M/s.PKB Feed



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Mills Private Limited cannot be sustained.

9. Thus, for all the reasons stated above, we do not find any infirmity in the order impugned in this appeal. Accordingly, the writ appeal is dismissed and the impugned order passed by the learned Single Judge is confirmed. The appellant/bank is directed to release the document in question within a period of two weeks from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, C.M.P.No.2756 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)  
23.11.2022

Index : Yes/No  
sasi/rkm

To:

The Reserve Bank of India  
16, Rajaji Salai, Fort St. Glacis  
Chennai – 600001.



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T.RAJA, ACJ.  
AND  
D.KRISHNAKUMAR,J.

(sasi/rkm)

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