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WP.No.30146 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.30146 of 2011 & M.P.No.1 of 2011

Sarath Kakumanu

... Petitioner

Vs

1. The Chief Manager
Andhra Bank, T.T.K.Road,
Chennai – 600 018.
2. The Assistant General Manager,
Andhra Bank, T.T.K.Road,
Chennai – 600 018.
3. The Chairman and Managing Director,
Andhra Bank, No.5-9-11, Salfabad,
Dr.Pattabi Bhawan, Hyderabad,
Andhra Pradesh – 500 004.

... Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the respondents to forthwith return the original Sale Deed Document No.3558 of 1995 dated 15.07.1995 on the file of Sub Registrar Officer at Adyar bearing Survey No.231/2A and measuring in all about 23.83 Cents in Kottivakkam Village.



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For Petitioner : Mrs.Abitha Banu
For Respondents : Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia

ORDER

This Writ Petition has been filed to direct the respondents to forthwith return the original Sale Deed Document No.3558 of 1995 dated 15.07.1995 on the file of Sub Registrar Officer at Adyar bearing Survey No.231/2A and measuring in all about 23.83 Cents in Kottivakkam Village.

2. The case of the petitioner is that M/s.Pioneer Alloy Castings Private Limited company was founded by the father of the petitioner. As the said company required some additional finances on temporary basis in the year 2004 for which the bank requested for additional security and the petitioner's father has given additional security for a brief period of three months. The said loan has been repaid and loan account has been closed even during the life time of the petitioner's father. Thereafter, despite several requests to the respondents to return the documents, the respondents have



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not returned the documents. On the other hand, the respondents took a view that the petitioner stood as a guarantor for the mortgage loan availed by Vantage Resorts and Clubs Private Limited and deposited title deeds for the said mortgage loan, against which the bank has initiated proceedings under the SARFAESI Act for recovery and therefore, they are exercising a general lien on the title deeds deposited by the petitioner. Therefore, it is his contention that the bank invoking general lien under section 171 of the Indian Contract Act will not arise. Hence, seeks a direction to return the documents.

3. Counter has been filed by the respondents. Wherein it is stated that the petitioner besides availing loan has executed collateral security in respect of the mortgage loan availed by Vantage Resorts and Clubs Private Limited. It is the contention of the respondent that the petitioner is one of the guarantor for the mortgage loan facility availed by the Vantage Resorts and Clubs Private Limited and he has executed General Form of Guarantee dated 29.12.2009 in respect of Survey No.231/2A measuring to an extent of 23.83 cents as collateral security for the due repayment of the loan availed by Vantage Resorts and Clubs Private Limited vide offer of security



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and mortgage deed dated 19.03.2008. As the amount has not been settled, the bank has filed Original Application before the Debt Recovery Tribunal in O.A.No.1 of 2012 wherein the writ petitioner was made as the fifth defendant. The property in respect of which title deed is sought to be returned is also shown as one of the property in the above application. The Debt Recovery Tribunal by its Order dated 27.09.2019 allowed the application and recovery certificate has been issued for a sum of Rs.4,85,54,271.30. Therefore, submitted that as the amount has not been fully paid, the documents cannot be returned.

4. The learned counsel appearing for the petitioner would submit that the petitioner created a mortgage in respect of the loan available by the Pioneer Alloy Castings Private Limited and the above said loan has been fully repaid which has also been accepted by the respondents in their correspondence dated 01.12.2011, wherein it is stated that general lien has been exercised by the bank. Now a contrary stand has been taken in the counter as if the a mortgage loan has been availed by Vantage Resorts and Clubs Private Limited for which the petitioner stood as a guarantor. Therefore, it is his contention that as per Section 171 of the Indian Contract



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Act, general lien cannot be exercised. In support of his contention, relied on the judgment in **State Bank of India rep. by its Branch Manager, Kothagiri Branch, Nilgiris and another Vs. Jayanthi and others reported in [2011] 2 CTC 46 [DB].**

5. The learned counsel appearing for the respondents would submit that the petitioner is already party before the Debt Recovery Tribunal and the subject property is also shown in the schedule. It is a clear case of the bank that the petitioner stood as a guarantor for the mortgage loan availed by Vantage Resorts and Clubs Private Limited and recovery certificate has also been issued for Rs.4,85,54,271.30. Hence, submitted that the above proceedings has reached finality and now the petitioner cannot contend that it is only a general lien exercised by the bank. Therefore, submitted that the present Writ Petition is not maintainable.

6. No doubt the judgment cited by the petitioner has dealt with as to when general lien can be exercised. In the above case, despite clearing of the loan by the petitioner/husband, the bank exercised general lien in respect of the other loan where the petitioner/husband has not deposited the



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title deeds and considering the scope of Section 171 of the Indian Contract Act, this Court had held that the bank cannot retain the document since the loan, for which he has deposited the title deeds, has been repaid. Whereas, it is the specific contention of the respondent that a mortgage deed was executed in respect of the home loan availed by the Vantage Resorts & Clubs Pvt Limited for which the petitioner also executed security and mortgage in respect of the above loan. According to them this issue is already the subject matter before the Debt Recovery Tribunal in O.A.No.1 of 2012 and a copy of the Order has also been produced before this Court.

7. A perusal of the Order passed by the Debt Recovery Tribunal in O.A.No.1 of 2012 indicate that the writ petitioner has been made as a fifth defendant in the above application. The above Order further makes it clear that no plea has been taken by the petitioner with regard to security for the mortgage said been executed by the petitioner for the Vantage Resorts Club Private Limited. The only contention with regard to the payment of instalment has been raised. Considering the entire circumstances, the above application has been allowed and recovery certificate has been issued for a sum of Rs.4,85,54,271.30 with interest from 27.09.2019 till the date



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of realisation. When the very document was put in question before the recovery proceedings before the Debt Recovery Tribunal and the same was not questioned, now the petitioner cannot contend that there is no collateral security or the mortgage executed by him. When the documents of the petitioner was relied upon by the bank, which is also the subject matter of the issue and decided and reached its finality, now it is premature to contend that those documents have not been executed as collateral security. In such view of the matter, direction cannot be given to the bank to return of the documents and I do not find any merits in this Writ Petition.

8. Accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

vrc

To,

1. The Chief Manager
Andhra Bank, T.T.K.Road,



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N.SATHISH KUMAR, J.

VTC

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