IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.30298 of 2019

Chandra ..Petitioner

Vs.

1.The Branch Manager,
REPCO Bank,
Gandhipuram Branch,
Coimbatore.

2.Vijaya

3.Praveen
(R2 & R3 impleaded as per Order dated 18.11.2019 made in W.M.P.No.32795 of 2019 in W.P.No.30298 of 2019) ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Mandamus, directing the respondent to return the documents pertaining to the property situated at Plot No.5, comprised in Town Survey No.10/1120, Ramanathapuram, Coimbatore which was given as security for the loan transaction covered under Loan Account Nos.SLR/29 and SLR/64 without claiming any general lien.

For Petitioner : Mr.K.S.Kaviarasu

For Respondents : Mr.A.Ilangovan for R1
R2 & R3 - Served - No appearance

O R D E R

The petitioner seeks issuance of Writ of Mandamus, directing the respondent / Bank to release the documents relating to the property mortgaged by her to secure borrowings under the loan Account No.02-001-0000002842.

2.It is the contention of the petitioner that the petitioner had offered her immovable property as a security and borrowed a sum of Rs.18,00,000/- from the respondent / Bank. According to the petitioner, she had repaid the loan but the respondent / Bank refused to return the documents that were entrusted with the Bank as a security for the loan borrowed by her. The Bank had sent a reply, stating that the documents cannot be returned, since there is a default in payment of two loan accounts in SLR-60 and SLR-88 availed by one Vijaya along with her son Praveen, the repayment of which, the petitioner had guaranteed.

3.It is also stated that SARFAESI proceedings are pending in respect of those two loan accounts. While the learned counsel for the petitioner would rely upon the judgment of the Hon'ble Division of this Court in M.Shanthi Vs. Bank of Baroda rendered in W.P(MD).No.12613 of 2016 in support of his submissions, the learned counsel for the respondent / Bank would invite my attention to the judgment of the Hon'ble Supreme Court in Syndicate Bank Vs. Vijay Kumar and Others reported in AIR 1992 SC 1066, the judgment of the Hon'ble Division of this Court in C.R.Ramachary and Others Vs. Indian Overseas Bank and Others reported in 2019 (2) CTC 645 and the judgment of another Hon'ble Division Bench of this Court in State of Bank of India, Kotagiri Branch Vs. Chokkalingam and Others reported in (2008) 1 MLJ 1009.

4.In Syndicate Bank Vs. Vijay Kumar and Others, the Hon'ble Supreme Court had recognized the right of a general lien of a Banker under Section 171 of the Contract Act. The Hon'ble Supreme Court had held that the right of general lien of Banker is a very valuable right and it is entitled to recognition. In fact, while dealing with the question of guarantees, the Hon'ble Supreme Court had stated that the Bank has a general lien over the property of the guarantor also till such time, the debt remains unpaid.

5.In State Bank of India, Kotagiri Branch Vs. Chokkalingam and Others, the Hon'ble Division Bench of this Court has held that in a mercantile system, banker has general lien over all forms of commercial papers, which has deposited as security for repayment of loan. The Hon'ble Division Bench in State Bank of India Vs. Chockalingam and others extensively referred and quoted the judgment of the Hon'ble Surpeme Court in Syndicate Bank's case refered to supra.

6.In C.R.Ramachary and Others Vs. Indian Overseas Bank and Others, the Hon'ble Division Bench of this Court had considered the judgment of the Division Bench in M.Shanthi Vs. Bank of Baroda, relied upon by the learned counsel for the petitioner and held that the said judgment would not apply as it turned upon the peculiar facts of the said case.

7.I find that the law regarding the general lien of Banker is well settled to the effect, a Bank has a right to withhold documents till such time, the entire loan which has either been borrowed or guaranteed is repaid. The mere fact that the petitioner is a borrower in one case and guarantor in another case would not alter the position of general lien. Hence, I do not find any merit in the Writ Petition.

8.The Writ Petition fails and it is accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To:-

1.The Branch Manager,
REPCO Bank,
Gandhipuram Branch,
Coimbatore.

+1cc to Mr.A.Ilangovan, Advocate SR.No.44426
+1cc to Mr.K.S.Kaviarasu, Advocate SR.No.44320

W.P.No.30298 of 2019

SKM(CO)
CB(29/07/2022)