AD-20
Ct No.09
11.12.2023
TN

WPA No. 21677 of 2023

M/s. Satimata Himghar and others
Vs.
Indian Bank and others

Ms. Payati Chowdhury,
Mr. Dipanjan Dutta,
Ms. S. Mitra,
Ms. Priya Malakar
.... for the petitioners

Mr. Pratip Mukherjee,
Ms. Mousumi Pal,
Mr. Koushik Modak
.... for the respondent-Bank

1. Learned counsel for the petitioners submits that a loan was taken by the partnership firm-petitioner no.1 of which all the rest of the petitioners are partners. Despite the loan having been cleared off fully, the title deeds and other security for the loan which was deposited with the respondent no.1-Bank are not being returned by the Bank.

2. Learned counsel for the Bank argues that the petitioner no.5 was the guarantor in respect of a loan taken by a company of which the petitioner no.5's wife is a Director.

3. As such, the Bank has a claim in respect of the petitioner no.5 in the capacity of guarantor. For such reason, the deeds are not being released by the Bank.

4. Learned counsel for the Bank seeks leave to file an affidavit-in-opposition in order to disclose the details of the deeds and wants to ascertain whether the deeds are common with regard to both the loans.

5. Upon hearing learned counsel for the parties, what is evident is that the partnership firm, being petitioner no.1, has already repaid its loan in its entirety.

6. Even if it is assumed that petitioner no.5 is liable to repay, as a Guarantor, a loan taken by a third party-company of which the wife of the petitioner no.5 is a Director, the same could not create a lien on the loan account/deeds deposited by the partnership firm, which is an entirely different entity altogether.

7. The mere fact that petitioner no.5 may be common in the sense that he is a partner of the petitioner no.1-firm as well as a guarantor in respect of a different loan by a third party-entity cannot furnish a ground to the Bank to withhold the title deeds and other security of the partnership firm, which has no connection whatsoever with the loan taken by the other juristic entity/company.

8. Thus, the defence of the Bank cannot be accepted, being not tenable in the eye of law. Insofar as the Bank seeking to furnish details of the documents-in-question, in the event it were to be found that the title deeds and other security in respect of both the loans were common, it would be a gross negligence on the part of the Bank, since for the same title deeds and other security, the Bank could not have created two separate mortgages in respect of two different loans taken by entirely different entities.

9. Thus, I do not find any reason to drag the matter further by directing affidavits unnecessarily.

10. Apart from the admitted facts, there is nothing required to be brought before the court to decide the issue on merits.

11. Accordingly, WPA No. 21677 of 2023 is disposed of by directing the respondent-Bank to return the title deeds and other security deposited as security for the loan taken by the petitioner no.1-partnersip firm which has since been repaid in its entirety. Such documents shall be returned by the Bank within a fortnight from date.

12. There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)