D/L. 5.
August 30, 2023.
MNS.

WPA No. 10442 of 2020
with
CAN 1 of 2023

Sri Promod Ranjan Roy and another
Vs.
The Reserve Bank of India and others

Mr. Rahul Karmakar,
Ms. Gargi Goswami,
Ms. Debjani Sengupta

… for the petitioners.

Mr. Avishek Guha,
Ms. Akansha Chopra

…for the ICICI Bank Limited.

Mr. Victor Chatterjee,
Mr. A. Sardar

…for the respondent no. 3.

1. The contention of the petitioners is that the petitioners took loan from the respondent-ICICI Bank Limited and subsequently repaid the same. The bank issued a 'no due certificate', but refused to return the registered title deed of the petitioners, which was the security of the loan granted to the petitioners in the first place.
2. Learned counsel appearing for the petitioners hands over a printout of a Frequently Asked Questions (FAQ) from the bank's website,

where it is provided *inter alia* that the lenders ask for property documents, since a home loan is a secured loan and the original property documents, like title documents, are kept with the lender throughout the loan tenure.

3. It is contended that the bank was duty-bound to return the title deed, which was the security of the loan, to the petitioners. Having not done so, the petitioners were compelled to move up to the Ombudsman, who turned down the said request of the petitioners to get back the title deed, prompting the present challenge.
4. It is contended that the well-settled legal position and commercial norm is that a bank or financial institution, before granting a loan, has to be satisfied of deposit of valid title deeds to secure the loan. Nothing has been shown by the bank to deviate from such position in the present case.
5. It is argued that the Ombudsman observed that the bank has followed the extant norms and procedures and no deficiency is observed on their part, which finding is required to be set aside and costs to be imposed upon the bank.

6. Learned counsel appearing for the ICICI Bank Limited hands over a copy of a tripartite agreement entered into between the bank, the petitioners and the concerned developer.
7. Learned counsel, placing reliance on Clause 5 thereof, argues that the parties agreed that the owner/developer undertakes and ensures that the sale deed/conveyance deed shall be registered and handed over to the bank. The owner/developer was also to ensure that the flat is delivered to the borrower in good condition and further undertakes to provide the same specifications as agreed upon and more particularly described in the Second Schedule thereof.
8. Learned counsel also places reliance on a copy of a letter issued by the respondent-ICICI Bank Limited dated November 3, 2020, to the developer, where it was pointed out that the developer was yet to submit the title deed for the loan agreement of the petitioners.
9. By way of reply, the developer, Todi Constructions Pvt. Ltd. (respondent no. 9 herein) replied on August 20, 2021 indicating that it had misplaced the original conveyance deed of the petitioners.

10. That apart, learned counsel for the ICICI Bank Limited also cites several communications by the bank, annexed to the writ petition, where the bank repeatedly insisted that the original deed was with the builder and the builder had never provided the same to the bank.

11. By placing reliance on an e-mail dated February 14, 2020 by the bank to the petitioners, it is pointed out that the bank informed the petitioners that it was in contact with the builder for a very long time, but the builder was not willing to share the record where the sale deed was given and to whom. The same was preceded by another e-mail by the petitioners of even date, where the petitioners admitted that the registration of the flat-in-question was done on March 31, 2017.

12. Learned counsel also submits that, in the present case, the loan was given to the petitioners in good faith, on the premise that the flat, which was to be constructed by the developer for the petitioners, was to be the security for the loan. As such, it is argued that since the bank was never in custody of the title deed, there is no question of the bank returning the same to the petitioners.

13. Hearing learned counsel for the parties and perusing all the materials on record, it is rather surprising that the bank, which is expected to be of prudence equivalent to a reasonable person, as per banking norms, advanced the loan to the petitioners in first place without having in custody a proper title deed of the property-in-question as a security. However, the same may, at best, amount to a bad business practice on the part of the bank for which the bank should otherwise suffer, but inasmuch as the present proceeding is concerned, we are not entering into the merits of the practice of the bank in general, but have to be confined to the transactions between the parties.
14. In the present case, there is nothing on record to indicate that the petitioners had, at any point of time, handed over the registered title deed which was executed in favour of the petitioners admittedly on March 31, 2017, to the bank.
15. In fact, the petitioners, by e-mail dated February 14, 2020, wrote to the bank that the registration of the flat was done on March 31,

2017, snapshots of certified copy of the deed being sent by the petitioners as well.

16. By its reply on the same date, the bank took a specific stand that the builder was not willing to share records where the sale deed was given to the bank.

17. Although a document has been produced by the bank at the time of hearing, indicating that the developer admitted that it had misplaced the documents, the said document need not be relied on for the purpose of deciding the present writ petition since it has not come supported by any affidavit.

18. Even on the documents annexed to the writ petition, the consistent stand of the bank has been that it had never received the registered deed executed in favour of the petitioners. The writ petitioners, nowhere, have produced an iota of document to indicate that the same was ever handed over to the bank.

19. Despite the apparent absurdity in a transaction where the bank, without taking into custody the registered deed, advanced a loan, the same cannot be a convincing factor for observing conclusively that the bank was ever in custody of the document.

20. Hence, the Ombudsman's finding that the bank was not guilty of deficiencies in that regard, cannot be assailed.
21. The defence now sought to be insinuated by the petitioners is on the bad banking practice apparently adopted by the bank in granting the loan to the petitioners without taking on record a registered title deed. However, since the petitioners themselves were the beneficiaries of such act of the bank, the petitioners cannot now resile and say that the bank's practice was a malpractice. In fact, the petitioners cannot be permitted to take advantage of their own wrong on such score.
22. Hence, as evident from the materials, the bank was never in custody of the registered title deed executed in favour of the petitioners, if any.
23. Accordingly, WPA No. 10442 of 2020 is disposed of with liberty to the petitioners to take appropriate steps against the respondent nos. 9 and 10, the developers, if the petitioners so choose, for recovery of their title deed, if available with the said developers.

24. In view of disposal of the writ petition, the connecting application, bearing CAN 1 of 2023, is also disposed of.
25. There will be no order as to costs.
26. 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.)