IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

MR.JUSTICE N.SESHASAYEE

W.P.No.13641 of 2020
and W.M.P.Nos.16945 of 2020
and W.M.P.No.10798 of 2023

K.Srinivasan

... Petitioner

Vs.

1.The Assistant General Manager,
State Bank of India,
RASMECC-CUM-SARC,
No.208, Anna Salai,
(Vignesh Complex),
Puducherry-605 001

2.State Bank of India,
Represented by its Branch Manager,
Market Committee Complex,
Thattanchavady,
Puducherry-605 009 ... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents to release the original agreement to sale dated 12.12.2000 and the original sale deed dated 25.02.2002, which are with the respondents.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.R.Ragavalu Naidu

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents to release the original agreement to sale dated 12.12.2000 and the original sale deed dated 25.02.2002, retained with the respondents.

2. The petitioner's grievance falls within a narrow compass:

- The petitioner is an employee of a certain corporate house and he along with few of his colleagues applied for housing loan with the respondent. Due to certain reasons, the loan was not serviced by all the borrowers and it was declined as non performing assets. The proceedings were initiated before the Debt Recovery Tribunal-1, Chennai in D.R.C.No.43 of 2013, for recovery of the amount against all the 26 defaulters, which included the petitioner herein.

- On 03.05.2013, a recovery certificate came to be issued, in terms of which a liability of Rs.5,92,980.33/- payable with interest at 8% per annum from 2004 was passed. Subsequently, all the defaulters, including the petitioner approached the bank for a negotiation, which resulted in the bank offering a one time settlement.

- According to the petitioner, the gross amount which he was liable to pay, the extent of waiver offered, and the amount required to be paid based on OTS was not expressly communicated to him. However, believing that he is required to pay only Rs.9.01 Lakhs, he made the said payment in few instalments up to 10.02.2016. He was under a bona fide belief that he had discharged the entire loan amount. But, according to the respondent / bank even under the OTS scheme, the petitioner was still liable to pay another Rs.5.19 Lakhs to the bank.

- Thereafter, the petitioner applied for a NOC in order to obtain the documents that he had mortgaged with the bank. The bank then would raise a claim for Rs.573, as amount required to be paid by the petitioner, which the petitioner has paid, and the bank had issued a NOC to the petitioner vide its communication dated 31.05.2016. Thereafter, the petitioner approached the bank for return of its original title deeds, but that however, was not forthcoming. Hence, the petitioner has approached this court with this petition.

3.The response of the bank is candid. It admitted that a OTS entered on 25.02.2015, and the waiver in paying part liability was given to the petitioner and few other similarly placed borrowers. It also admitted that the petitioner had paid Rs.9.01 Lakhs. The dispute is over the differential payment of Rs 5.19 Lakhs, which according to the respondent is still required to be paid. Whereas according to the petitioner, he has paid Rs.573 as was required subsequently and in terms of which, even a NOC was issued to him by the bank.

4.The respondent's explanation to the above stand of the petitioner is that the petitioner was wrongly given certain concession under the bona fide belief of the bank that he is eligible for that concession under a scheme for one time settlement of Advances Under Collection Account (AUCA) (SBI AUCA OTS 2016-2017). In terms of this scheme, the petitioner is not eligible for any benefit under the scheme, but it was wrongly given. This mistake of the bank was later discovered. Hence, the bank continues to hold its lien on the documents that were mortgaged by the petitioner.

5.On the one side, this court sees a petitioner who says that he was not even informed about the amount payable in terms of the OTS as was offered in February, 2015. On the other hand here is a bank which says that it had applied a wrong scheme to give certain concession for which the petitioner is not eligible. If it is a mistake, then the public money cannot be lost to the bank and necessarily the petitioner may have to pay the same. However, since there appears some terrible miscommunication or no communication on certain aspects vital to both sides. But, the petitioner is still required to pay Rs.5.19 Lakhs to the bank. The next aspect relates to is whether the petitioner needs to pay any interest on the said amount. Since the mistake has been on the part of the bank for not communicating promptly, especially when it has issued a NOC, it would be inequitable to fasten interest liability on the said sum Rs.5.19 Lakhs on the petitioner.

N.SESHASAYEE, J.

Anu

6.In view of the above, this court directs the petitioner to pay a sum of Rs.5.19 Lakhs to the bank within a period of twelve weeks from today, whereupon the respondents are directed to release the documents to the petitioner.

7.This writ petition is disposed of with the above observation and direction. No Costs. Consequently, the connected miscellaneous petitions are closed.

07.07.2023

Anu
Index : Yes / No
Neutral citation : yes/no
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