



W.P.(MD) No.4229 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.4229 of 2020

and

W.M.P.(MD) No.3565 of 2020

Sivanoo

.. Petitioner

Vs.

1.Indian Overseas Bank,
Through its Chief Manager,
Main Road, Puliyanakudi-627 855,
Kadayanallur Taluk,
Tenkasi District.

2.Sankaranarayanan

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned communication of the 1st respondent dated 27.06.2019 and to quash the same and consequently direct the 1st respondent to return the documents which are received as collateral security for the cash credit loan Nos.303 and 306 to the petitioner.

For Petitioner : Mr.G.Mariappan



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For R1 : Mr.N.Dilip Kumar

For R2 : B.Jeyakumar

ORDER

The petitioner has filed this writ petition seeking to quash the communication of the first respondent dated 27.06.2019 and direct the first respondent to return the documents, which were received as collateral security for the cash credit loans of Loan Nos.303 and 306 to the petitioner.

2. It is the case of the petitioner that he and his younger brother, the second respondent, were partners in two businesses viz., M/s.Subbaiah Silks and M/s.Subbaiah Fabrics. They have approached the first respondent-Bank seeking credit facility and the same was granted on condition that the petitioner and the second respondent offer their properties as collateral security. Accordingly, the petitioner and his brother had handed over the documents of title, which have been morefully set out in Paragraph No.3 of the affidavit filed in support of the writ petition. Meanwhile, the petitioner and the second respondent



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were not successful in running the businesses and as a result, they were not able to make the periodical remittances to the Bank, which constrained the Bank to initiate proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act. A notice under Section 13(2) of the said Act dated 03.11.2011 was issued, wherein the first respondent-Bank had demanded repayment of the loan, failing which the properties will be brought to sale. The petitioner, thereafter, negotiated with the Bank and made a one-time settlement with the Bank in respect of the two loans. Thereafter, the petitioner sought for return of the documents. The first respondent-Bank sent a letter dated 02.08.2017 stating that the documents would be released as per the procedure. This letter was in response to the petitioner's three earlier letters dated 31.03.2017, 05.07.2017 and 01.08.2017.

3. It is the further case of the petitioner that he alone had been negotiating with the Bank and had also re-paid the loan. Therefore, the petitioner had sent a letter dated 25.06.2019 stating that it was he who



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had repaid the entire loan and therefore, the documents had to be handed over back to him. However, by reply dated 27.06.2019 (impugned in this writ petition), the Bank had informed that since the properties were offered as security jointly, the documents could be released only jointly. The petitioner is aggrieved by this communication and therefore, approached this Court by filing the present writ petition.

4. The learned counsel for the first respondent-Bank would submit that the Bank is unable to release the documents, since the second respondent had also joined in depositing of title deeds and creating mortgage. Therefore, unless the petitioner obtains a No Objection from the second respondent, they would not be in a position to handover the documents to the petitioner.

5. The second respondent, who is represented by counsel, would submit that if the documents are handed over to the petitioner, he will proceed to alienate the properties and then the second respondent be put to severe loss.



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6. The apprehension of the second respondent appears to be slightly unfounded, since specific properties have been allotted by the father to the two sons under a registered Will dated 14.09.2006. However, in order to allay the fears of the second respondent, this Writ Petition is allowed with the following directions:

- (a) The first respondent-Bank shall handover the original documents to the petitioner on receipt of a no objection from the second respondent which no objection the second respondent shall issue within a period of one week from the date of receipt of a copy of this order.
- (b) In case, the petitioner is going to sell his share to any third party, then all the original documents shall only be handed over to the second respondent, as he is a co-sharer and the documents in respect of the properties of both the petitioner and the second respondent are the same. The documents shall not be given to the purchaser.



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(c) The petitioner shall also provide certified copies of the documents to the second respondent viz., (i) Deed of othi (mortgage with possession) dated 02.06.1977 executed by Nalraju in favour of Maragatham Chettiar and registered as Document No.792/1977 in the office of the Sub Registrar, Puliangudi; and (ii) Sale deed dated 03.07.1979 executed by Nalraju and Alagammal in favour of P.S.K.Subbiah Mudaliar and registered as Document No. 1204/1970 in the office of the Sub Registrar, Puliangudi;

(d) In case the second respondent requires to peruse the original documents, the same shall be handed over for perusal to the second respondent.

No costs. Consequently, connected miscellaneous petition is closed.

21.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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P.T.ASHA, J.

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