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W.P.No.7171 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.7171 of 2020

and

W.M.P.No.8567 of 2020

Geetha,
S/o late P.Govindasamy

... Petitioner

vs.

1. Indian Bank,
Chinniampalaya Branch,
Coimbatore.

2. G.Radha Krishnan,
S/o late P.Govindasamy,
Proprietor the Fashion Silks,
No.2/148, Government High School (Opp),
Avanashi Road, Chinniampalayam,
Coimbatore – 641 062

... Respondents

Prayer in W.P : The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ o Mandamus to direct the 1st respondent to discharge/ cancel the mortgage dated 05.11.200-8 registered as Document No.9396 of 2008 in the office of the Sub-Registrar, Singanallur, Coimbatore and release /return the original title deeds in compliance of the settlement / decree dated 06.12.2014 in O.S.No.9534 of 2012 on the file of III Additional Subordinate Judge, Coimbatore.



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For Petitioner : Mr.K.J.Parthasarathy

For Respondents : Mr.N.Somasundar for R1
R2-left

ORDER

This Writ Petition has been filed to issue a Writ o Mandamus to direct the 1st respondent to discharge/ cancel the mortgage dated 05.11.200-8 registered as Document No.9396 of 2008 in the office of the Sub-Registrar, Singanallur, Coimbatore and release /return the original title deeds in compliance of the settlement / decree dated 06.12.2014 in O.S.No.9534 of 2012 on the file of III Additional Subordinate Judge, Coimbatore.

2. The case of the petitioner is that the 2nd respondent is the proprietorship concern which had availed credit facility and executed loan agreement dated 21.10.2008 for a sum of Rs.3 lakhs in favour of the 1st respondent Bank. Late P.Govindasamy, father of the petitioner and the 2nd respondent stood as a guarantor and executed agreement of guarantee dated 21.10.2008 and as a collateral security late P.Govindasamy deposited the original title deeds of the property situated in Irugur Village, Coimbatore and executed registered Memorandumm of mortgage by deposit of title deeds dated 05.11.2008 in favour of the 1st respondent. In



the meanwhile, P.Govindasamy died on 14.02.2011 leaving behind his wife, the petitioner/daughter and the 2nd respondent as legal heirs to succeed his estate. Subsequently, the 2nd respondent absconded and defaulted in payment of EMI's to the 1st respondent. Legal proceedings for recovery of amount had been initiated by the 1st Respondent Bank against the legal heirs of late P.Govindasamy in O.S.No.954 of 2012 before the III Additional Subordinate Court, Coimbatore. In the meanwhile, the mother of the petitioner also passed away on 05.05.2013 and the petitioner contested the above suit and repaid the loan amount in instalments. During the pendency of the suit, the III Additional Subordinate Judge, Coimbatore had referred the matter to Mediation and Conciliation Centre in M.C.C.No.218 of 2014, in which, a compromise was arrived at and the petitioner also fulfilled the compromise. Based on the compromise, a decree was also passed by III Additional Subordinate Judge on 06.12.2014. However, though several requests were made by the petitioner, the 1st respondent neither discharged the mortgage nor returned the original documents. Hence, the present writ petition.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the 1st respondent.

4. It is seen from the records that the matter has been settled before



the Mediation at Coimbatore. The 1st respondent Bank, considering the payments already made by the petitioner accepted to receive a sum of Rs.5,000/- towards full and final settlement of the suit claim and agreed to return the documents and the petitioner also remitted the agreed sum of Rs.5,000/- and fulfilled her obligation under the compromise. Based on the mediation report dated 03.12.2014, a decree was also passed on 06.12.2014, recording the compromise.

5. Learned standing counsel for the 1st respondent Bank would state that the brother of the petitioner has not come and therefore, they are not able to discharge the mortgage and release the original title deeds to the petitioner.

6. It is seen that the 2nd respondent, brother of the petitioner was absconding from the year 2011 and a complaint was also lodged before the Inspector of Police, Peelamedu Police Station and F.I.R was also registered in Cr.No.1299 of 2011 and till date his whereabouts is not known.

7. Learned counsel for the petitioner would state that the petitioner is ready to execute indemnity bond for the release of the documents. The said statement is recorded.

8. In view of the above, the first respondent Bank is directed to



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discharge/cancel the mortgage dated 05.11.2008 registered as Document No.9369/2008 in the office of the Sub Registrar, Singanallur, Coimbatore and release/return the original title deeds in compliance of the settlement/decreed dated 06.12.2014 made in O.S.No.954 of 2012 on the file of III Additional Subordinate Judge, Coimbatore, within a period of two weeks on the petitioner executing the indemnity bond. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2024

Index :yes/No
Speaking /Non speaking order
vsi

To

The Indian Bank,
Chinnampalaya Branch,
Coimbatore.

J.NISHA BANU, J.



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