IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.11453 of 2024
and W.M.P.No.12559 of 2024

T.Sivasubramanian .. Petitioner

-vs-

The Chief Manager,
Punjab National Bank,
Circle SASTRA, PNB House,
Trichy Thanjavur Road,
Kailasapuram, Trichy-620014. .. Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the letter dated 22.03.2024 issued by the respondent bank and quash the same in so far as it relates to rejection of release of Title Deeds covered under the Memorandum of Deposit of Title deeds No.24080 of 2015 dated 24.11.2015 registered in the Office of the Sub-Registrar, Villianur pertaining to the land measuring an extent of 2256 sq.ft. and building thereon situated at Door No.3/54, Sedat Street, Kanuvapet Village, No.32 comprised in CAdastre No.704 Part, R.S.No. 242/101, Villanur Revenue Village, Puducherry and further direct the respondent to release the title deeds forthwith by executing a registered Discharge Receipt.

For Petitioner : Mr.R.Sreedhar

For Respondent : Mr.C.S.Sashikumar

for Mr.M.L.Ganesh.

ORDER

(Order of the Court was made by **S.S.SUNDAR, J**)

This writ petition is filed for issuance of writ of certiorarified mandamus to quash the letter dated 22.03.2024 issued by the respondent bank rejecting the request to release the title deeds of the properties which were offered as security in connection with the loans obtained by the petitioner from the respondent bank.

2. Brief facts necessary for the disposal of this writ petition are as follows:

(a) The petitioner availed various business loans from the respondent bank by mortgaging his immovable properties by deposit of title deeds (equitable mortgage). Since the loans advanced to the petitioner became NPA, the petitioner approached the respondent bank for one time settlement. It is admitted that the petitioner's offer of Rs.1.85 crores was accepted by the respondent bank to settle all the dues.

(b) Before the approval of one time settlement by the respondent bank, there was exchange of communications between the parties which would show that there is no dispute with regard to the settlement proposal. The bank has specifically referred to loan accounts and the total amount outstanding. It is admitted by the respondent bank that the settlement proposal is in respect of 12 loan accounts in the name of the petitioner, his wife and his son and that the OTS offer of Rs.1.85 crores was to discharge the said 12 loan accounts. Even for processing the OTS proposal, the respondent bank has collected a sum of Rs.27.75 lakhs as upfront amount.

(c) While accepting the OTS offer and demanding further payment, the Branch Manager was instructed to ensure closure of loan accounts immediately after receipt of the money. The respondent bank has agreed to release all the title deeds to the original owner of the properties after payment of the entire OTS amount along with interest, if any. As per the terms, the petitioner has paid the balance amount within the time and there is no dispute with regard to the same.

(d) It is to be noted that the respondent bank has also given 'No Dues Certificate' admitting and acknowledging that the petitioner is not liable to pay any more amount. However, after issuing the 'No Dues Certificate' in respect of the loans which are secured by the properties, the respondent released three title deeds after issuing 'Loan Closure Letters' for the 12 loan accounts, however, refused to return one title deed on the ground that the petitioner had executed a letter of continuity on 27.09.2013 for availing credit facility in favour of M/s.Raja Traders and therefore, the title deed pertaining the said property cannot be handed over to the petitioner as long as the outstanding dues from M/s.Raja Traders is fully settled. Challenging that communication dated 22.03.2024, the above writ petition is filed.

3. Learned counsel for the respondent bank, reiterating the averments in the counter-affidavit would submit that the respondent bank is not obligated to return the title deeds. He would submit that the respondent bank admitted the OTS sanction letter for all the loan accounts, however, the loan account of M/s.Raja Traders is not included

in the one time settlement offer.

4. This may be a fact. However, this does not entitle the respondent bank to hold the title deeds of the properties which are secured only for the 12 loan accounts. From the records, it is evident that the properties of the petitioner were mortgaged only for the 12 specified loan accounts which were, of course, in the name of the petitioner, his wife and his son.

5. The second contention of the respondent bank, as stated in the counter-affidavit, is that the petitioner and his family members had agreed to settle the loan accounts in respect of the loan availed by the petitioner, M/s.Vijayaganapathy Fertilizers, RB Agro Associates and Mr.Karthikeyan and also in respect of another loan availed by petitioner, M/s.Vijayaganapathy, RB Agro Associates and Proprietor, Mr.S.Karthikeyan. To put it simple, the contention of the respondent bank is that in terms of sanction letters, the petitioner and his family members had settled all the loan accounts except M/s.Raja Traders for which the petitioner stood as a guarantor/mortgagor and that the petitioner gave a letter of continuity dated 27.09.2013 and 06.05.2015

with an intention to create equitable mortgage in terms of Section 58(f) of the Transfer of Property Act, 1882. This Court is unable to accept the said contention.

6. Section 58(f) of the Transfer of Property Act deals with equitable mortgage, that is mortgage by deposit of title deeds. It is to be noted that a mortgage as defined under Section 58 of the Act refers to a transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan. Therefore, the property mortgaged is a security only for the money advanced. The mortgage by deposit of title deeds is valid only after the terms of mortgage is registered in the prescribed format. By a letter, the terms of mortgage cannot be altered. By the letter of continuity dated 27.09.2013, the petitioner has acknowledged the enhancement/ modification of limits that was extended to M/s.Raja Traders. The petitioner also confirmed that the title deeds of the immovable properties deposited with the respondent bank on 15.07.2008 shall continue to be held by the bank as additional security for several liabilities of M/s.Raja Traders. However, the said letter does not create a mortgage, as

mortgage by deposit of title deeds cannot be extended to any other loan that was not secured by a proper instrument without a registered document. Therefore, the case of the respondent that the title deeds cannot be handed over to the petitioner cannot be accepted.

7. It is to be noted that a few banks, for convenience, are adopting this practice which should be deprecated. The respondent bank should be fair in their dealings. When a property is secured for loan by execution of a document, there cannot be an attempt by the bank by getting a letter to enlarge the scope of recovery by illegal and fraudulent means. It is the duty of the bank to be fair in all their dealings with the customers/borrowers. When one time settlement proposal was accepted and huge amount is collected from the petitioner under the promise that the documents would be released, the bank cannot now turn down the request for return of documents under the pretext that the property offered by the petitioner in connection with the loans obtained by the petitioner is also available as security for a different loan in which the petitioner is only a guarantor and not a mortgagor. The respondent bank should have moral obligations under the doctrine of lender's liability.

Unless the bank maintains some discipline in dealing with securities offered by the borrowers, the credibility of the institution which is expected to protect the economy of this country, will be eroded.

8. We are of the view that the conduct of the respondent bank in making an attempt to coerce the petitioner is not tenable and therefore, this Court is of the view that the respondent should compensate the petitioner for not handing over the documents and dragging him to Court for the release of the documents.

9. The writ petition is, accordingly, allowed by directing the respondent bank to hand over the title deeds forthwith. The bank is directed to pay a sum of Rs.10,000/- (Rupees ten thousand only) as costs to the petitioner for dragging him to this Court for getting the documents which were deposited by the petitioner earlier. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) **(N.S., J.)**
24.07.2024

Index : Yes/No
NC : Yes/No

sra

To

The Chief Manager,
Punjab National Bank,
Circle SASTRA, PNB House,
Trichy Thanjavur Road,
Kailasapuram, Trichy-620014.

S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

(sra)

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