IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.06.2024

Pronounced on : 07.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19681 of 2020

N.A.Gopu ... Petitioner

Vs.

1.Banking Ombudsman
C/o Reserve Bank of India,
Fort Glacis,
Chennai 600 001
2.Branch Manager,
Indian Overseas Bank,
Satyamangalam 604 153
Gingee(TK),
Villupuram District
3.The Sub Inspector of Police,
Nallan Pillai Petral,
Gingee(TK),
Villupuram District
4.Elumalai
5.Venkatesan ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the second respondent to return the petitioner's sale deed dated 08.12.2000 registered as document number 915/2000 before the Satyamangalam Sub Registrar Office, Gingee Taluk, Villupuram District within the time limit fixed by this Court.

For Petitioner : Mr.S.Gunaseelan

For Respondents

For R1 : Mr.C.Mohan
for M/s.King & Partridge

For R2 : Mrs.V.Rajeswari

For R3 : Mr.E.Vijay Anand,
Additional Government Pleader

ORDER

This writ petition has been filed for direction to the second respondent to return the petitioner's sale deed which was deposited while borrowing the loan by the petitioner.

2. The petitioner had availed loan from the second respondent for three times and he had repaid the entire loan amount to the second respondent. While borrowing the first loan, his original sale deed and its parent documents were deposited by the petitioner. The first loan was availed by the petitioner in the year 2007 and the second loan was of the year 2011. Both the loans had been repaid by the petitioner in the year 2015. Thereafter, the third loan was availed by the petitioner in the year 2015 and had repaid the entire loan amount in the year 2019. When the

petitioner had repaid the entire first loan amount, the second respondent cancelled the mortgage deed and returned the original title deeds to the petitioner. But after repayment of the third loan, the second respondent refused to return the original title deeds for the reason that the petitioner had given personal guarantee for the loan availed by the fifth respondent in the year 2011. According to the petitioner, the fifth respondent is unknown to him and he is a stranger. He never stood as guarantor for the fifth respondent's loan. The second respondent caused legal notice to the petitioner as well as the fifth respondent on 02.07.2018 thereby called upon the petitioner to repay the loan amount borrowed by the fifth respondent. When the petitioner contacted the second respondent, he was informed that he stood as guarantor for the loan availed by the fifth respondent. Immediately, the petitioner lodged complaint as against the Bank Manager i.e. the fourth respondent and also the fifth respondent herein alleging that they forged the signature of the petitioner and fabricated the guarantee deed. The petitioner lodged complaint before the jurisdictional police and he was issued CSR. However, no FIR has been registered so far.

3. The second respondent filed counter and the learned counsel appearing for the second respondent submitted that the petitioner had availed credit facilities on few occasions and executed equitable mortgage deed for the properties owned by him and deposited original title deeds. The petitioner and the fifth respondent are neighbours. For the loan borrowed by the petitioner, the fifth respondent stood as guarantor and for the loan borrowed by the fifth respondent, the petitioner stood as guarantor vide guarantee document dated 31.01.2011. Thereafter, the fifth respondent committed default and it became non performing asset and thereafter, the fifth respondent was served with notice. Even till today, the fifth respondent did not pay the loan amount. Under Section 171 of the Contract Act, the second respondent has a right of general lien over the title documents which were deposited by the petitioner. In support of the said contention, the second respondent relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Syndicate Bank Vs. Vijayakumar and others*** reported in ***AIR 1992 SC 1066***. She further submitted that the writ petition is not maintainable since the

dispute related to contracts cannot be adjudicated under Article 226 of the Constitution of India.

4. The learned counsel for the petitioner would submit that in the circumstances where the issue falls under three categories as held in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai*** reported in ***(1998) 8 SCC 1***, the writ petition can very well be maintained under Article 226 of the Constitution of India. The High Court has a discretion to entertain or not to entertain a writ petition. If an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Hon'ble Supreme Court of India not to operate as a bar in at least three contingencies i.e. where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

5. In the case on hand, the relief sought for by the petitioner is to enforce the fundamental rights. Once the petitioner has settled the entire loan amount which he had borrowed already, he has right to ask for return of original documents, which were already mortgaged while availing loan. Therefore, the writ petition is very much maintainable for the prayer sought for in this writ petition.

6. The only question is that whether the petitioner is entitled to receive the original documents which were deposited while availing loan by him when he stood as guarantor for the loan amount borrowed by the fifth respondent who committed default in repayment of loan amount. As stated supra, the petitioner had availed loan on three occasions. When the petitioner repaid the entire loan amount of the first and second loans, the mortgage was duly cancelled and the entire original documents were returned to the petitioner. However, after repayment of the third loan, the petitioner was denied original documents which were deposited while availing the third loan on the ground that the petitioner stood as guarantor for the loan availed by the fifth respondent and the fifth respondent committed default in repayment of the loan amount.

7. The petitioner seriously disputed the very execution of guarantee deed dated 31.01.2011. He also disputed the signature found in the guarantee deed dated 31.01.2011. In this regard, the petitioner also lodged complaint and he was issued CSR No.102 of 2020 on the file of the Inspector of Police, Nallan Pillai Petral Police Station, Villupuram District and it is pending for enquiry. The petitioner also lodged so many complaints as against the then Manager of the second respondent i.e. the fourth respondent. However, no action has been taken on the complaint lodged by the petitioner.

8. Though the second respondent specifically contended that when the petitioner borrowed loan, the fifth respondent stood as guarantor, in order to substantiate the said contention, the second respondent did not produce any document to show that the fifth respondent stood as guarantor for the loan availed by the petitioner. Whereas the second respondent produced guarantee deed dated 31.01.2011 in which the signature of the petitioner found as if he stood as

guarantor. In fact the previous loans availed by the petitioner were duly settled by him and thereafter original title deeds were returned in favour of the petitioner. The third loan was borrowed by the petitioner in the year 2015 and repaid the said loan amount in the year 2019. Whereas the fifth respondent availed loan in the year 2011 itself. Therefore in the year 2011, even assuming that the petitioner had executed guarantee deed for the loan availed by the fifth respondent, no documents were deposited for the loan borrowed by the fifth respondent. In fact, the petitioner had availed third loan in the year 2015 by depositing the original title deeds and by execution of mortgage deed. Therefore, the petitioner would not have executed any guarantee deed for the loan availed by the fifth respondent. However, it is under enquiry on the file of the third respondent. Therefore, the provision under Section 171 of the Contract Act is not applicable to the case on hand. The second respondent cannot have any right of general lien over the title documents which were deposited by the petitioner in respect of the dues payable for the loan amount of the fifth respondent.

9. That apart, there is no evidence to show that the second respondent has initiated proceedings as against the fifth respondent in order to recover the loan amount. Therefore, without even taking any action as against the fifth respondent to recover the loan amount, the second respondent ought not to have retained the original title deeds of the petitioner in respect of the dues payable by the fifth respondent.

10. In view of the above, this Court is of the considered opinion that the direction can be issued as against the second respondent to return the documents which were deposited by the petitioner. Accordingly, the second respondent is directed to return the original sale deed 08.12.2000 registered vide document No.915 of 2000 to the petitioner forthwith.

11. With the above direction, this writ petition is allowed. There shall be no order as to costs.

07.06.2024

Neutral Citation:Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

lok

To
1.Banking Ombudsman
C/o Reserve Bank of India,
Fort Glacis,
Chennai 600 001
2.Branch Manager,
Indian Overseas Bank,
Satyamangalam 604 153
Gingee(TK),
Villupuram District
3.The Sub Inspector of Police,
Nallan Pillai Petral,
Gingee(TK),
Villupuram District

W.P.No.19681 of 2020

07.06.2024