BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16517 of 2020

R.Natarajan ... Petitioner

Vs.

The Branch Manager,
State Bank of India,
Dindigul Main Branch,
Dindigul. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent to come forward to Sub-Registrar, Vadamadurai, Dindigul to register the receipt under loan account No.D1578074840 thereby to discharge the equitable mortgage loan registered under Doc.No.1160/1987 on the file of the Sub-Registrar, Vadamadurai, Dindigul within a time frame to be fixed by this Court.

For Petitioner : Mr.T.R.Subramanian

For Respondent : Mr.V.P.Rajan

ORDER

Heard both sides.

2. The petitioner's father Ramasamy had availed agricultural loan and term loan from the respondent bank during 1986-87 to the tune of Rs.15,000/-. The loan details are as follows:-

SI. No.	Date	Account Numbers (Old and New Numbers)	Amount
1.	31.07.1986	222 (01578074840)	Rs.750/-
2.	31.07.1986	222A(01578074840 00)	Rs.2,500/-
3.	01.12.1986	222B(01578074840 01)	Rs.1,750/-
4.	01.09.1987	222D(01578074840 02)	Rs.6,000/-
5.	31.07.1986	222C(01578074840 03)	Rs.4,000/-

The petitioner's father executed the registered mortgage deed bearing Document No.1160 of 1987 dated 24.08.1987. The petitioner's father did not repay the loan amount. The account became Non Performing Asset on 31.01.1992. The petitioner's father passed away on 01.12.2016. The petitioner approached the bank for issuing the discharge receipt. The bank took the stand that the petitioner has to pay a sum of Rs.3,02,357.25/-. The petitioner's case is that when his father had availed a loan of Rs.15,000/- in all, it would be inequitable to demand a huge amount of Rs.3,02,357.25/- for discharging the mortgage. No consensus could be arrived at. Hence, this writ petition came to be filed.

3. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The respondent has filed counter affidavit and the learned standing counsel took me through its contents and called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. I will not fault the bank with regard to the quantification made by them. But the question that arises is whether the said demand is prudent. The correctness of the figure quoted by the respondent is not an issue. Article 62 and 63 of the Limitation Act, 1963 read as follows:-

Description of Suit	Period of Limitation	Time from which period beings to run
62. To enforce payment of money secured by a mortgage or otherwise charged upon immovable property	Twelve Years	When the money sued for becomes due.
63. By a mortgage:- (a) for foreclosure; (b) for possession of immovable property mortgaged.	Thirty Years Twelve Years	When the money secured by the mortgage becomes due. When the mortgagee becomes entitled to possession.

The mortgage was executed way back in the year 1987. The account itself was classified as Non Performing Asset on 31.01.1992. We are now in January 2024. More than 30 years have elapsed after the account was classified as Non Performing Asset. Therefore, the bank cannot file any suit for foreclosure. It cannot take any steps for recovery of the amount due under the mortgage. Likewise, the petitioner also cannot file a suit for redemption. Thus, permitting the *status quo* to continue will not be in the interest of both the parties. In fact, the petitioner can very well proceed to deal with the property. This is because, the petitioner is having the original title document with him. He can even ignore the encumbrance entered in the register and convey title to the purchaser. Since the petitioner's father had availed loan from the bank, I indicated that the petitioner should discharge the same as pious obligation.

6. The learned counsel for the petitioner on instructions submitted that the petitioner would pay a sum of Rs.1,00,000/- towards full and final settlement of all the liability incurred by the father. Of-course, the learned standing counsel for the respondent is not in a position to give his consent.

7. Taking into account the overall facts and circumstances, I direct the respondent to accept the sum of Rs.1,00,000/- to be paid by the petitioner and

issue discharge certificate and also facilitate the registration of the discharge certificate. Such discharge certificate shall be issued by the respondent immediately upon receipt of Rs.1,00,000/- by the petitioner.

8. The Writ Petition is allowed on these terms. No costs.

24.01.2024

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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