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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15997-2018

Date of Decision: 20.03.2024

Pardeep Kumar

..Petitioner

Versus

Bank of India and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Rakesh Dhiman, Advocate for
Mr. Abhimanyu Kalsy, Advocate
for the petitioner

Mr. G.S. Anand, Advocate
for respondents No. 1 and 2

VINOD S. BHARDWAJ , J. (ORAL)

1. Prayer made in the present writ petition is for issuance of direction to the respondents to return the original title deeds bearing wasika No. 511, dated 05.05.1986, wasika No. 1241, dated 27.08.1986, wasika No. 606 dated 08.05.1986, wasika No. 1247 dated 27.05.1986, wasika No. 537 dated 06.05.1986, wasika No. 570 dated 05.05.1986 and wasika No. 605 dated 08.05.1986, respectively for the total property measuring 27 kanals (3 Acres 3 Kanals) in the Revenue Estate of Village Duneke, Tehsil and District Moga in the name of Prem Sagar son of Kundan Lal, Prop. of M/s Kundan Rice and General Mills, VPO Duneke, Tehsil Moga, District Moga.
2. Counsel for the petitioner contends that M/s Kundan Rice and General Mills- proprietorship firm of Prem Sagar (father of petitioner) had availed financial assistance/loan from the respondent-Bank in the year 1986. The account of the petitioner was declared as NPA (Non-Performing Asset) and a civil suit for recovery of the balance amount was filed, which was

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due at that time in the Civil Courts at Moga on 06.01.1994. On account of notification of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (hereinafter referred to as the 'Act 1993'), the said civil suit was transferred to DRT Jaipur (as it was then) and it was renumbered as OA No. 36. A decree was thereafter passed in favour of the respondent-Bank on 24.10.1996. On notification of the additional establishment of Debt Recovery Tribunal, Chandigarh, all the cases of the territories of Punjab, Haryana and Himachal were transferred from DRT Jaipur to DRT Chandigarh. He further contends that even though the loan account had already been settled and a Clearance/No Dues Certificate had been issued by the respondent-Bank, however, the original title deeds etc., handed over to the respondent-Bank, have not been returned. Hence, the present petition.

3. Written statement on behalf of respondent-Bank has been filed acknowledging receipt of said documents and the institution of the civil suit originally at Moga and its transfer from Moga to Jaipur and thereafter to Chandigarh under the Act, 1993.

4. The respondent-Bank moved an application before the Recovery Officer, DRT- III, Chandigarh on 20.11.2017 vide Diary No. 11004 for tracing the judicial file of the case and handing over the original title deeds which were filed along with the suit initially instituted by the respondent-Bank at Civil Courts, Moga, which such file had been transferred to DRT, Jaipur and received at DRT-III at Chandigarh. An order dated 27.03.2018 was passed by the Recovery Officer, vide which the application was allowed and it was observed that the original title deeds were not available on record of the file and a letter was sent to DRT-II for tracing the same and to send any connected files lying

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with them. Counsel for the respondent-Bank contends that the submission of the original documents along with the original claim filed by the respondent-Bank is not in dispute and that the said original documents have seemingly been misplaced during the Court proceedings and/or during the transfer of the files to Jaipur and thereafter to Chandigarh. It is further contended that the petitioner may, if so advised, seek certified copies of the said wasika numbers from the office of the Sub Registrar, since the originals have seemingly been misplaced.

5. Counsel for the petitioner further contends that he would have no objection to seek those documents, however, on account of the total additional expenses, to which the petitioner has now been burdened, as a result of loss of the documents, some token penalty ought to be imposed upon the respondent-Bank.

6. Even though a specific case has been set up by the respondent-Bank of India that the original title deeds have been filed alongwith the instituted civil suit, however, the list of documents have not been placed on the record, on the basis thereof, this Court could have outrightly held that the original title deeds had actually been filed by the respondent-Bank alongwith the suit for recovery instituted by them. The stand of the respondent-bank is more of a self serving statement and it cannot be treated as a loss of document by Court, outrightly. The burden of having appended the original documents along with the civil suit for recovery is technically on the bank and no presumption can be attached to it. However, as the documents have been misplaced and it may not be possible after so many years to retrieve or trace the documents or even to fix responsibility, it is necessary to proceed further and to resolve. Thus, on account of lapse/failure

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on the part of the respondent-Bank to conclusively establish that the original documents had infact been attached with the instituted civil suit and were part of the Court record, the stand of the respondent-bank has to be accepted with some circumspection and costs to enable petitioner to arrange for fresh copies.

7. The respondent-Bank is hence directed to pay a sum of Rs.5,000/- to the petitioner so as to meet all the expenses which the petitioner may have to incur for securing certified copies of the title deeds from the office of the Sub Registrar towards settlement of all his claims. On receipt of such application for issuance of certified copy, the respondent authorities shall not insist on submission of a DDR for establishing a loss of the original documents and copy thereof be supplied, without any delay, and on payment of requisite charges.

8. The petition is disposed of accordingly.

March 20, 2024
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking / reasoned : Yes / No
Whether reportable : Yes / No