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(2014) 07 KL CK 0123

In the High Court Of Kerala

Case No : WP(C). No. 7843 of 2014 (E)

Niyas P.P. — APPELLANT

Vs

The State Bank of Travancore — RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0123

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K.R. Avinash, Abdul Raoof Pallipath and C.H. Abdul Rasak, Advocate for the Appellant; T. Sethumadhavan, Senior Advocate, Pushparajan Kodoth, K. Jayesh Mohankumar, Advocates and T.K. Sasindran, Addl, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The two writ petitions are filed, one by the original borrower and the other by the guarantor.

2. Niyas. P.P., the petitioner in W.P. (C). No. 7843 of 2014, had availed of three facilities, from the respondent-Bank; being two agricultural loans and one "Suvidha" loan. With respect to the agricultural loans, the said Niyas had mortgaged three different properties and had also deposited the title deeds of the said properties to create mortgage. With respect to the Suvidha loan, the property of Abdul Azeez A.K., the petitioner in W.P. (C) No. 11541 of 2014, was mortgaged. Admittedly all the aforesaid loans fell in default.

3. The respondent-Bank allowed release of one of the properties mortgaged as against the agricultural loans, on the undertaking that the petitioner would settle the said loans by selling the said property. The two agricultural loans were, thus, settled. However, on seeking release of title deeds of the other two properties, mortgaged towards the agricultural loan, the respondent-Bank contended that the Bank is exercising a general lien over such property, especially in the circumstance of the Suvidha loan being in arrears. It is also submitted by the learned counsel for the respondent-Bank that though there is an equitable

mortgage created, of the property of Abdul Azeez, the said Abdul Azeez has taken three other loans on the strength of the very same security, being the property mortgaged, in the Suvidha loan availed by Niyas. In such circumstance, the learned counsel for the respondent-Bank would contend that the release of the title deeds sought for is not viable, unless the Suvidha loan is settled.

4. With respect to the arrears on the Suvidha loan, the learned counsel appearing for the respondent-Bank would submit that there was arrears of around Rupees Thirty Lakhs. The same was subject of a compromise and Niyas was directed to deposit an amount of Rs. 20,50,000/- as one time settlement. Rs. 18,99,250/- admittedly has been remitted and what remains is an amount of Rs. 1,50,750/-. The petitioner contends that if one of the properties is released, he would settle the balance amount of Rs. 1,50,750/- within a period of one month from the date of release. The petitioner would also contend that such a prayer is sought for, only on the intending purchaser insisting for perusal of the original title deed and related documents.

5. Definitely, there can be no dispute that the title deeds were deposited with the respondent-Bank for securing the loans availed of by the petitioner. In such circumstance, if the purchaser is brought to the Bank within a period of one month from today and on deposit of Rs. 1,50,750/- [Rupees one lakh, fifty thousand and seven hundred and fifty], necessarily the release of the title deeds would be possible. If Niyas so turns up, with the purchaser and remits the said amount in the respondent-Bank, there will be no difficulty in the release of the two title deeds with respect to the two properties, mortgaged as against the two agricultural loans, which admittedly is satisfied. The general lien exercised over the said properties, with respect to the Suvidha loan, would also be extinguished on satisfaction of the said loan. It is made clear that even, on the satisfaction of the Suvidha loan, the release of the properties mortgaged by Abdul Azeez, would not be possible in the context of the said Abdul Azeez having availed of three other facilities on the security of the said property.

6. W.P. (C). No. 7843 of 2014 is disposed of, with the above directions, granting the petitioner therein, Niyas, one month time to undertake the exercise directed by this Court.

7. With respect to W.P. (C). No. 11541 of 2014, the prayer is to re-fix the upset price of the property which has been notified for sale against the Suvidha loan availed by Niyas. That relief, does not survive, in the context of the orders passed in W.P. (C) No. 7843 of 2014. Hence, W.P. (C) No. 11541 of 2014 is dismissed, however, reserving the right of the petitioner therein, Abdul Azeez, to raise his contentions with respect to the price of the property, at the appropriate time when such cause of action arises.

Ordered accordingly. Parties are left to suffer their respective costs.