(2023) 07 KL CK 0167

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20772 Of 2023

T.R. Ramya APPELLANT

Vs

Ayyanthole Service Cooperative Bank Ltd. No. 494 RESPONDENT

Date of Decision : 24-07-2023

Acts Referred:

Citation : (2023) 07 KL CK 0167

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : A.S.Dileep, P.Binod, K.Y.Sudheendran, Suseela Dileep, Sudeep Aravind Panicker, Haritha Harinath, Reshmi Thomas

Final Decision : Allowed

Judgement

Gopinath P, J

1. Petitioner had availed a loan of Rs.1,00,000/- (Rupees One lakh only) from the 1st respondent bank. When proceedings were initiated against the petitioner to recover the amounts due from the petitioner, in terms of the said loan, the petitioner approached this Court by filing W.P.(C.) No.35576 of 2022, which was disposed of by Ext.P3 judgment, permitting the petitioner to pay the then outstanding amount of Rs.2,98,989/- in fifteen monthly instalments together with any accrued interest and charges. The first instalment was to be paid on or before 20.04.2023. The petitioner was also permitted to make an application for settlement of the liability under the provisions of the "????????? ????????? ?????? ?????? -2023" (hereinafter referred to as 'the 2023 Scheme').

2. The case of the petitioner is that, the petitioner produced a copy of the judgment in W.P.(C.) No.35576 of 2022 before the bank on 17.03.2023 and also applied for the benefit of One Time Settlement under the '2023 Scheme'. Learned counsel appearing for the petitioner would submit that despite serving a copy of Ext.P3 judgment in W.P.(C.) No.35576 of 2022 along with an application for

settlement of the liability in terms of the '2023 Scheme' before the bank on 17.03.2023, no reply was given by the bank on the application filed by the petitioner seeking the benefits of the '2023 Scheme' till 19.04.2023, forcing the petitioner to pay the first instalment (an amount of Rs.15,000/-) in terms of the directions contained in Ext.P3 judgment. Reference is made in this regard to Ext.P5 receipt issued by the 1st respondent bank. It is submitted that, thereafter, the application for One Time Settlement under the '2023 Scheme' was allowed by the bank and the petitioner was called upon to pay a sum of Rs.2,02,498/- (Rupees Two lakhs two thousand four hundred and ninety eight only), which was paid in full as is evident from Exts.P8A and P9 receipts issued by the 1st respondent bank. It is also submitted that Ext.P10 shows that the loan account was also closed by paying the aforesaid amount of Rs.2,02,498/- . The petitioner has approached this Court with the present writ petition, seeking the following reliefs:-

"(a) Issue a writ of mandamus or any other appropriate writ or order directing the 3rd respondent to consider Exhibit P11 and pass necessary orders to release the title deed of the petitioner by the 1st respondent;

(b) Issue a writ of mandamus or any other appropriate writ or order directing the 3rd respondent to consider Exhibit P11 and pass necessary orders directing the 1st respondent to return an amount of Rs.15,000/- paid by the petitioner as per Exhibit p5 to the 1st respondent in compliance of the direction in Exhibit P3 judgment."

3. Learned counsel appearing for the 1st respondent bank would submit that while the bank has no objection in releasing the documents in respect of the the property which has been deposited with the bank for the purpose of creation of mortgage, the bank has objection in releasing the amount of Rs.15,000/- remitted by the petitioner in terms of Ext.P5 receipt. It is submitted that the petitioner has no right to claim repayment of the amount since that amount was remitted in terms of the directions contained in Ext.P3 judgment.

4. Having heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent bank, I am of the opinion that the petitioner is entitled to succeed. The loan account has been closed in full. This is not disputed. Therefore, the petitioner is entitled to the release of the documents of title in respect of the properties mortgaged with the 1st respondent bank for the purpose of creation of mortgage. Insofar as repayment of a sum of Rs.15,000/- is concerned, I must hold that the petitioner is entitled to a refund of the said amount as the said amount was paid by the petitioner in terms of the directions contained in Ext.P3 judgment, which also contained a direction to the bank to consider any application, that may be filed by the petitioner in terms of the '2023 Scheme'. The petitioner was thereafter granted the benefit in terms of the '2023 Scheme' and was permitted to close the loan account by paying a sum of Rs.2,02,498/-. Since it is not disputed that the petitioner has paid the entire amount payable by the petitioner in terms of the '2023 Scheme', it is not proper

on the part of the 1st respondent to retain the amount of Rs.15,000/- paid by the petitioner in terms of the directions contained in Ext.P3 judgment. The bank has no case that the amount to be paid by the petitioner in terms of the ‘2023 Scheme’ was arrived at after giving credit of the amount to Rs.15,000/- paid in terms of Ext.P3 judgment.

Therefore, the writ petition allowed. The 1st respondent is directed to release the documents of title which was deposited with the bank for the purpose of creation of mortgage for securing the repayment of the loan in question. I also direct refund of the amount of Rs.15,000/- (Rupees Fifteen thousand only) paid by the petitioner in terms of Ext.P3 judgment (as evidenced by Ext.P5 receipt), within a period of one month from the date of receipt of a certified copy of this judgment.

