

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7589 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

MANISHA RAHUL BRAHMBHATT

Versus

BANK OF BARODA

Appearance:

MR.HITENDRA D RAJPUT(7224) for the Petitioner(s) No. 1

MR RITURAJ M MEENA(3224) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 14/10/2021

ORAL JUDGMENT

1. Heard learned advocate Mr. Hitendra Rajput for the petitioner and learned advocate Mr. Rituraj Meena for the respondent-Bank.

2. Rule returnable forthwith. Learned advocate Mr. Meena waives service of notice of rule on behalf of the respondent-Bank.

3. Having regard to the controversy in a narrow compass and with the consent of the learned advocates of the respective parties, the matter is taken-up for hearing today.

4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

"(A) **YOUR LORDSHIP** may allow this writ petition by issuing the writ of Certiorari and/or any other appropriate writ/direction or order and direct the respondent bank to issue No Due Certificate in favour of petitioner and also direct to handover the original title documents of the property in question immediately and forthwith.

(B) **YOUR LORDSHIP** may allow this writ petition by issuing the writ of Certiorari and/or any other appropriate writ/direction or order and direct the respondent bank to execute the release deed for the property being ALL THAT PIECE AND PARCEL OF THE IMMOVABLE PROPERTY BEING FLAT NO. 605, BLOCK -D, ADM. 88.63 SQ.MTRS. SURVEY NO. 884/2,ADM.5281 SQ. MTRS. LYING IN THE SCHEME KNOWN AS "RADHIKA VIHAR" SITUATED AND LOCATION IN THE SIM OF VILLAGE NARODA, TALUKA ASARAWA, DISTRICT AHMEDABAD.

(C) Pending Admission, Hearing and Final Disposal of this petition be pleased to direct the respondents to maintain status quo qua Residential property bearing ALL THAT PIECE AND PARCEL OF THE IMMOVABLE PROPERTY BEING FLAT NO. 605, BLOCK -D, ADM. 88.63 SQ. MTRS. SURVEY NO. 884/2, ADM. 5281 SQ. MTRS. LYING IN THE SCHEME KNOWN AS "RADHIKA VIHAR" SITUATED AND LOCATION IN THE SIM OF VILLAGE NARODA, TALUKA ASARAWA, DISTRICT AHMEDABAD which is in physical possession of the Petitioner.

(D) Ex-parte Ad-interim relief in terms of Para 9(C).

(E) Costs of this petition are awarded.

(F) Any other relief, order or direction which may be just, fit, proper, and equitable in the facts and circumstances of the Petition."

5. Brief facts of the case are that the petitioner was in need of financial assistance and therefore, respondent advanced a term loan of Rs. 9,80,000/-. The petitioner created a mortgage by way of security for the term loan advanced by the respondent-Bank with respect to the piece and parcel of the immovable property being Flat No. 605 Block No. D, admeasuring 88.66 sq.mtrs situated at Survey No. 884/2 in the Scheme known Radhika Vihar, Village-Naroda, Taluka-Asarwa, Dist. Ahemdabad.

6. The mortgage deed was registered at Serial No. 11281 on 18.07.2017.

7. As the petitioner could not re-pay the installments regularly, the account of the petitioner was classified as non-performing asset by the respondent-Bank on 12.12.2018. The respondent-Bank thereafter issued a notice under section 13(2) of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ['Sarfaesai Act' for short] on 11.01.2019 and 15.03.2019 for the recovery of the outstanding dues amounting to Rs. 9,95,683.22/-. The respondent-Bank has taken a symbolic possession of the property in question and thereafter preferred an application under section 14 of the Sarfaesai Act before the Chief Metropolitan Magistrate, Ahmedabad who, by order dated 22.08.2019, disposed of the application by appointing Subordinate Officer for taking physical possession of the property in question.

8. The petitioner deposited Rs. 3,03,5830/- from 30.06.2017 till 08.07.2019 as per the statement issued by the respondent-Bank which is at page 42 of the petition and accordingly, there was an outstanding of Rs. 6,98,200/- as on 21.08.2019.

9. It appears that the petitioner has thereafter, paid Rs. 7 lacs on 06.10.2019 when the Court Commissioner appointed by the Chief Metropolitan Magistrate issued the notice for taking the possession of the property in question. The petitioner also paid further Rs. 50,000/- as demanded by the respondent-bank on 12.12.2019 as recovery charges. The petitioner paid Rs. 25,000/- on 12.02.2020 and Rs. 30,000/- on 30.07.2020 as per the demand raised by the Bank.

10. Thus, according to the petitioner, the entire dues of the respondent-Bank was cleared and therefore, the petitioner requested for return of the original title document of the property in question along with no due certificate. However, the respondent-Bank did not return the original documents nor any discharge deed for mortgaged property was executed. The petitioner therefore, has filed this petition with the aforesaid prayers.

11. Learned advocate Mr. Rajput submitted that the respondent-Bank cannot withhold the original documents as the petitioner has repaid the entire dues of the term loan of Rs. 9.80 lacs advanced by the respondent-Bank.

12. On the other hand, learned advocate Mr. Meena submitted that after availing financial assistance by way of Rs. 9.80 lakh as term loan, the respondent-bank has advanced another financial assistance of Rs. 5 lakh under Pradhan Mantry Mudra Yojna['PMMY' for short] which is still outstanding and therefore, unless and until the said amount of loan is repaid by the petitioner, the respondent-Bank cannot release the original document nor execute any deed for discharge of mortgaged property in view of Clause No. Cause No. 14 of the term loan agreement executed by the erstwhile Dena Bank which is now merged with the respondent-Bank.

13. According to learned advocate Mr. Meena, Clause No.14 of the loan agreement stipulates that the respondent-bank can continue to have lien over the mortgaged property for satisfaction of the sum outstanding to the credit of anyone or more of such accounts in or towards satisfaction of any of their liabilities to the bank on any other account or in any other respect whether such liabilities by actual or contingent primary or collateral and several or joint by the petitioner. Learned advocate Mr. Meena also relied upon the undertaking given by the petitioner on 30.06.2017 at the time of taking the term loan of Rs. 9.80 lakh wherein the

petitioner has agreed and given a consent to the erstwhile Dena Bank to hold all securities belonging to the petitioner in possession of the bank, not only for the specific advance made thereon but also as a collateral security for any other moneys now due or which may at any time, be due from the petitioner whether singly or jointly with another or others. It was therefore submitted that the respondent-bank is entitled to hold the original document till the outstanding dues of the petitioner with regard to the loan advanced under the PMMY Scheme is repaid by the petitioner.

14. In rejoinder, learned advocate Mr. Rajput submitted that while granting the advance under PMMY Scheme, the respondent-Bank has advanced Rs. 5 lakh by way of a loan under terms and condition of the said scheme. The reference was made by learned advocate Mr. Rajput to the PMMY Scheme issued by the MSME Banking Department of the respondent-Bank and submitted that as per the Scheme, the respondent-Bank, in view of the RBI guidelines and the provisions of the Scheme, no collateral security is to be stipulated or obtained from the beneficiary of the scheme to whom the loan is given under the Scheme. It was also pointed out that the respondent-bank is covered by the Credit Guarantee Fund Scheme for

Micro and Small Enterprise as per the guidelines and therefore, the respondent-bank cannot withhold the original documents of the property mortgaged for availing term loan of Rs. 9.80 lakh by way of collateral security for the loan of Rs. 5 lakh advanced under the PMMY Scheme.

15. Having heard learned advocates for the respective parties and having gone through the material on record it is not in dispute that the petitioner has repaid the entire term loan of Rs. 9.80 lakh and there is no outstanding to the respondent-bank as against the amount of Rs. 9.80 lakh advanced to the petitioner in the year 2017.

16. The respondent-bank is not ready to release the documents of the property in question of the petitioner which are mortgaged while availing financial assistance of Rs. 9.80 lakh on the ground that the petitioner has thereafter availed financial assistance of Rs. 5 lakh under the PMMY Scheme. According to the bank, in view of the Clause 14 of the loan agreement and the consent given by the petitioner while availing financial assistance of Rs. 9.80 lakh, the respondent-bank is entitled to continue the lien over the mortgage property as collateral security till the petitioner repays the financial assistance of Rs. 5 lakh availed under the PMMY Scheme.

17. Reliance was placed on behalf of the respondent-bank on the Clause No. 14 of the loan agreement which reads as under:

"14. The Borrower/s hereby irrevocably agrees that the Bank may hold all the securities belonging to him / her / them (which may now be in Bank's possession or which may at any time hereafter come into Bank's possession) and the proceeds thereof respectively not for the specific Dena Niwas Loan made thereon but also as collateral security or for any other moneys now due or which may at an time be due from him /her / them to the Bank whether singly jointly with another or others. Further in addition to any general lien or similar right to which the bank as Bankers may be entitled by law, the Bank may at any time and without notice to him / her / them combine or consolidate all or any of his / her / their accounts with and liabilities to the bank and setoff or transfer any sums standing to the credit of anyone or more of such accounts in or towards satisfaction of any of his / her their liabilities to the bank on any other account or in any other respect, whether such liabilities by actual or contingent primary or Collateral and several or joint."

18. Similarly, the consent given by the petitioner on 30.06.2017 to erstwhile Dena bank while availing financial assistance of Rs. 9.80 lakh is also on the similar line permitting the respondent-bank to continue the lien over the mortgaged property for any of the loan advanced

to the petitioner in addition to the financial assistance of the term loan of Rs. 9.80 lakh.

19. However, the financial assistance of Rs. 5 lakh advanced by the respondent-bank is under the PMMY Scheme which clearly stipulates that such scheme is free of any collateral security. Respondent-Bank is not required to obtain any collateral security for the amount advanced by way of financial assistance under the PMMY Scheme.

20. As per the terms of the PMMY Scheme, the respondent-bank has provided for the security as under:

"Security:

As per extant Bank/RBI guidelines No Collateral Security is to be stipulated or obtained. Hence, only the assets created would be hypothecated to banks and all loans will be covered under CGTMSE Scheme as per guidelines. At present Retail trade activity is not covered under CGTMSE."

21. Thus, the respondent-bank while implementing the PMMY Scheme is not supposed to have any collateral security as per the RBI guidelines and only the assets created would be hypothecated to the bank and all loans will be covered under the Credit Guarantee Fund Scheme For Micro and Small

Enterprises ['CGTMSE' Scheme for short] as per guidelines.

22. In view of the above stipulation for advancing loan under PMMY Scheme, it is necessary to refer to the various provisions of the CGTMSE Scheme which provides guarantee cover to the respondent-bank for which it is provided in the PMMY Scheme that no collateral security is required to be obtained or stipulated while advancing the loan under the said Scheme.

23. CGTMSE Scheme defines collateral security as per Clause 2(ii) as under:

"(ii)"Collateral security" means the security provided in addition to the primary security, in connection with the credit facility extended by a lending institution to a borrower."

24. Chapter-II of the CGTMSE Scheme refers to the scope and extent of the Scheme which reads as under:

"3. Guarantees by the Trust

(i) Subject to the other provisions of the Scheme, the Trust undertakes, in relation to credit facilities extended to an eligible borrower from time to time by an eligible institution which has entered into the necessary agreement for this purpose with the Trust, to provide a

guarantee on account of the said credit facilities.

(ii) The Trust reserves the discretion to accept or reject any proposal referred by the lending institution which otherwise satisfies the norms of the Scheme."

25. It is pertinent to note at this juncture that the respondent-bank had advanced financial assistance of Rs 5 lakh to the petitioner under the PMMY Scheme in consonance with the CGTMSE Scheme and therefore it is not in dispute that the petitioner was entitled to the financial assistance under the PMMY Scheme read with CGTMSE Scheme.

26. Clause-7 of Chapter II of the CGTMSE Scheme prescribes the responsibilities of lending institution under the scheme which reads as under:

"7. Responsibilities of lending institution under the scheme:

(i) The lending institution shall evaluate credit applications by using prudent banking judgement and shall use their business discretion / due diligence in selecting commercially viable proposals and conduct the account(s) of the borrowers with normal banking prudence.

(ii) The lending institution shall closely monitor the borrower account.

(iii) The lending institution shall safeguard the primary securities taken from the borrower in respect of the credit facility in good and enforceable condition.

(iv) The lending institution shall ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Trust in the form and in the manner and within such time as may be specified by the Trust in this behalf and that there shall not be any delay on its part to notify the default in the borrowers account which shall result in the Trust facing higher guarantee claims.

(v) The payment of guarantee claim by the Trust to the lending institution does not in any way take away the responsibility of the lending institution to recover the entire outstanding amount of the credit from the borrower. The lending institution shall exercise all the necessary precautions and maintain its recourse to the borrower for entire amount of credit facility owed by it and Initiate such necessary actions for recovery of the outstanding amount, including such action as may be advised by the Trust.

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(vi) The lending institution shall comply with such directions as may be issued by the Trust, from time to time, for facilitating recoveries in the guaranteed account, or safeguarding its interest as a guarantor, as the Trust may deem fit and the lending institution shall be bound to comply with such directions.

(vii) The lending institution shall, In respect of any guaranteed account, exercise

the same diligence in recovering the dues, and safeguarding the interest of the Trust in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Trust. The lending institution shall, in particular, refrain from any act of omission or commission, either before or subsequent to invocation of guarantee, which may adversely affect the interest of the Trust as the guarantor. In particular, the lending institution should intimate the Trust while entering into any compromise or arrangement, which may have effect of discharge or waiver of personal guarantee(s) or security. The lending institution shall also ensure either through a stipulation in an agreement with the borrower or otherwise, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor(s) without intimating the Trust. Further the lending institution shall secure for the Trust or its appointed agency, through a stipulation in an agreement with the borrower or otherwise, the right to list the defaulted borrowers' names and particulars on the Website of the Trust."

OF GUJARAT

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27. Clause 8 of the Chapter-II of the CGTMSE Scheme refers to the Annual Guarantee Fee to be charged for the first year and on the outstanding amount for the remaining tenure of the credit facilities sanctioned/renewed to MSEs on or after April 01, 2018 as detailed therein. Therefore, the respondent-bank was supposed to pay risk

premium to the credit guarantee fund scheme for the micro and small enterprises so as to secure the failure on part of the petitioner to repay the loan.

28. Chapter-III of the CGTMSE Scheme refers to the guarantees. Clause 9 of Chapter III provides for extent of the guarantee coverage and refers to 80% of the amount in default subject to maximum of Rs 40 lacs to be paid by the CGTMSE Trust to the respondent-bank in case of woman entrepreneur.

29. In view of the provisions of CGTMSE Scheme the respondent-Bank is covered for any default which may be made by the petitioner with regard to financial assistance advanced by the respondent-bank under the PMMY Scheme.

30. In view of the above, respondent-bank has committed an error by withholding the original documents of the petitioner in respect of the term loan of Rs. 9.80 lakh which is fully paid by the petitioner. The respondent-bank could not have withheld the original documents of the mortgage property in question once the petitioner has repaid the loan as the financial assistance advanced by the respondent-bank under PMMY Scheme is advanced without any collateral security.

31. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. Respondent-bank is directed to hand over all the original documents of the property in question which is mortgaged by the petitioner for availing financial assistance of Rs. 9.80 lakh in the year 2017. The respondent-bank is also directed to execute the deed of discharge of the mortgaged property forthwith. The respondent-bank shall complete such exercise within a period of four weeks from today.

32. With the aforesaid directions, petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

JYOTI V. JANI,/*-

(BHARGAV D. KARIA, J)

THE HIGH COURT
OF GUJARAT

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