

(2013) 07 CAL CK 0078

Calcutta High Court

Case No: M.A.T. No. 981 of 2013 and C.A.N. No. 6414 of 2013

Shyama Enclave Pvt. Ltd.

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision: July 4, 2013**Citation:** (2014) 1 CHN 548**Hon'ble Judges:** Arun Mishra, C.J; Joymalya Bagchi, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Arun Mishra, C.J.

The legality of the order dated 03.06.2013 passed in W.P. 14854(W) of 2013 by the Single Bench has been questioned. The appellant/petitioner filed a writ petition claiming that it is the owner of the plot of land who purchased it in the year 1998-99 without any knowledge of any encumbrance thereupon. It came to know later on that there was some encumbrance in favour of the Bank. Land had been mortgaged with the Bank. Petitioner offered to make the payment which has been accepted by the Bank with the rider that they will not be in a position to deliver the title deed deposited to the petitioner since petitioner did not deposit the same with the Bank. The Bank has confirmed that title deeds relating to the property in question are in possession of the Bank. Petitioner agreed to pay a sum of Rs. 5 lakh to the Bank to buy peace and protect the property.

2. The Single Bench has accordingly directed permitting the petitioner to pay a sum of Rs. 5 lakh within a period of four weeks from date, thereafter the Bank will have no further claim against the property in question. It has also been ordered that the Bank will issue a receipt to the petitioner acknowledging therein that the original title deeds relating to the property in question are in possession of the Bank. It has also been ordered that Bank will not part with the title deeds till directed by an order of an appropriate forum. The petitioner has been given liberty to institute appropriate proceedings against the vendors from whom the petitioner acquired

the property on account of damages and for the title deeds to be made over by the bank to the petitioner. In case suit is filed, it is to be decided by the Trial Court expeditiously.

3. The legality of the aforesaid order has been questioned only in part by the appellant/petitioner on the ground that once offer has been accepted by the Bank by receiving Rs. 5 lakh in all fairness, the title deed or deeds ought to have been released in favour of the appellant/petitioner. As such the direction to the Bank not to release the title deeds in favour of the petitioner without the order of appropriate forum has been questioned.

4. We have heard the learned counsels for the parties at length. We are of the considered opinion that since the title deed was not deposited by the appellant/petitioner, obviously, the Bank could not have been ordered to release the title deed without the consent of the vendors in favour of the purchaser. Purchaser himself has voluntarily paid Rs. 5 lakh, which part of the order has not been questioned. Bank has settled the amount of Rs. 5 lakh subject to the rider that they will not be in a position to give possession of the title deed to the petitioner. Petitioner knowing fully well this rider had agreed to pay Rs. 5 lakh in full and final satisfaction of the charge on the property as it was mortgaged with the Bank. However, at the same time as the vendors have not agreed for delivery of the title deed, obviously the question could not have been decided in the writ jurisdiction. Writ jurisdiction is not the appropriate mode for such delivery of said title deed.

5. There may be certain disputes inter se vendors and purchaser and it is not the case that the vendors have agreed for the aforesaid settlement between the purchaser as well as the Bank and they have not also agreed for delivery of the title deed in the absence thereof. The Single Bench could not have ordered delivery of title deed to the purchaser/appellant.

6. We find no illegality in the order passed by the Single Bench. Consequently, the appeal being devoid of merit is hereby dismissed.

7. In view of dismissal of the appeal itself the application being C.A.N. 6414 of 2013 is also dismissed. There will be no order as to costs.

J. Bagchi, J.

I agree.